CERTAIN UNEMPLOYMENT ISSUES PENDING BEFORE THE SUBCOMMITTEE

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC ASSISTANCE AND UNEMPLOYMENT COMPENSATION

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

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CERTAIN UNEMPLOYMENT ISSUES PENDING BEFORE THE SUBCOMMITTEE

WEDNESDAY, OCTOBER 28, 1981

House of Representatives,
Committee on Ways and Means,
Subcommittee on Public Assistance and
Unemployment Compensation,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room B-318, Rayburn House Office Building, Hon. Harold E. Ford (chairman of the subcommittee) presiding.

Chairman Ford. The Subcommittee on Public Assistance and Unemployment Compensation will come to order.

First, as the new chairperson of the subcommittee I would like to say to the ranking minority member, Mr. Bafalis, that I am delighted to join with you on the subcommittee.

I am also delighted to have Mr. Anthony of Arkansas as the newest member of the Public Assistance Subcommittee.

Today we are conducting the public hearings on six unemployment compensation issues that are pending before the subcommittee. These issues were summarized at the end of the press release announcing the hearings, which will be included in the record at the end of my statement.

Primarily because of the severe budget constraints, we probably will not legislate this year on all of the matters addressed in these hearings. However, because of the interest of many Members of the House, it is important that the public have this opportunity to present their views and information to the subcommittee of the impact on the provisions of the present law that are of concern to them.

Three of these issues are before us today because of expiration dates. Extension of the Reed Act is before us because a portion of it expired on July 1 of this year. The exclusion of the alien farmworkers from the Federal unemployment tax expires on December 31 of this year, as does the exclusion of certain fishermen. The subcommittee must decide whether any or all of these should be extended.

Two of the issues—the denial of unemployment compensation benefits to ex-servicemen who had the opportunity to reenlist, and the pension offset provision—have been included because of the widespread interest and concern about the impact and fairness of these provisions. Because of the budget limitations, I doubt that we can finally resolve these issues this year.

The remaining issue, the age limitation on the exclusion from the Federal unemployment tax of student interns, is of interest to a number of universities around the country and has been included at the request of several members of the House.

[The press release announcing the hearing follows:]

[Press release of Friday, Oct. 9, 1981]

HON. HAROLD E. FORD (D., TENN.), CHAIRMAN OF THE SUBCOMMITTEE ON PUBLIC ASSISTANCE AND UNEMPLOYMENT COMPENSATION, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES PUBLIC HEARINGS BEGINNING OCTOBER 28, 1981, ON CERTAIN UNEMPLOYMENT ISSUES PENDING BEFORE THE SUBCOMMITTEE

The Honorable Harold E. Ford (D., Tenn.), Chairman of Subcommittee on Public Assistance and Unemployment Compensation, Committee on Ways and Means, U.S. House of Representatives, today announced public hearings on the following unemployment compensation issues:

(1) Extension of the Reed Act, expired July 1, 1981 (Section 903(c)(2) of the Social Security Act);

(2) Extension of exclusion of certain alien farm workers from the Federal Unemployment Tax Act (FUTA), expires January 1, 1982 (Section 3306(c)(1)(B) of the Internal Revenue Code);

(3) Denial of unemployment compensation benefits for ex-servicemen who had the opportunity to reenlist (Section 2405 of the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35);

(4) Exclusion of student interns over age 21 from FUTA (Section 3306(c)(10)(c) of the Internal Revenue Code);

(5) Reduction of unemployment compensation by the amount of pension or retirement pay received from a "base period" employer (Section 3304(a)(15) of the Internal Revenue Code as amended by Section 414 of P.L. 96-364);

(6) Exclusion of certain fishermen from FUTA (Section 822 of the Economic Recovery Tax Act of 1981, P.L. 97-34).

Witnesses may comment on any or all of these issues. Testimony must be limited to the unemployment compensation matters listed above and summarized at the end of this press release.

The hearings will be held on Wednesday, October 28, 1981 and, if necessary, will continue on Thursday, October 29. On October 28 the hearings will be held in Room B-318 Rayburn House Office Building, beginning at 10:00 a.m.; and, if necessary, they will continue on October 29 in Room H-137 of the Capitol, beginning at 10:00 a.m.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD

Individuals and organizations interested in presenting oral testimony at the hearing should submit their requests to be heard by telephone to be followed by a formal written request to John J. Salmon, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515; telephone (202) 225-3627. The initial telephone requests must be received by the Committee no later than the close of business, Wednesday, October 21, 1981. Notification to those scheduled to appear will be made by telephone as soon as possible after the filing deadline.

Requests to be heard must contain the following information:

(1) The name, address, title, firm affiliation and/or organization the witness will represent (as well as a telephone number where he or his designated representative may be reached);

(2) If appearing in an individual capacity, a list of any clients at whose request or in whose employ the witness appears; and

(3) A topical outline or summary of comments and recommendations.

The above information should also be incorporated in the prepared statements to be presented in person as well as those filed for the written record of the hearing.

PROCEDURE TO BE FOLLOWED FOR SUBMITTING TESTIMONY

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, witnesses scheduled to appear before the Committee are requested to submit 50 copies of their prepared statement to the full Committee Office, Room 1102 Longworth House Office Building, at least 24 hours in advance of the hearing. Failure to comply with this requirement may result in the witness being denied the opportunity to testify in person.

For those who wish to file a written statement for the printed record of the hearing in lieu of a personal appearance, *five copies* are required and must be submitted to the Committee Office by the close of business Friday, November 6, 1981. An additional supply of statements may be furnished for distribution to the press and public if supplied to the Committee office before the hearing begins.

SUMMARY OF ISSUES

1. Extension of Reed Act.—Section 903(c) of the Social Security Act, commonly known as the Reed Act, gives States authority to use a specified amount of unemployment compensation funds, on a revolving basis, for administrative rather than benefit purposes. Authority for States to use a portion of these funds expired on July 1, 1981. Authority to use an additional amount of the remaining funds expires July 1, 1982 and all authority expires July 1, 1983. S. 1641 (Mr. Grassley) would extend the Reed Act authority for 10 years, retroactive to July 1, 1981.

2. Extension of Exclusion from FUTA of Certain Alien Farm Workers.—Under present law, employers do not have to pay unemployment taxes on aliens admitted to the United States to perform agricultural work pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act. This exclusion from the Federal Unemployment Tax Act (FUTA) expires on December 31, 1981.

3. Denial of Unemployment Compensation Benefits for Ex-Servicemen Who Had the Opportunity to Reenlist.—Section 2405 of the Omnibus Budget Reconciliation Act of 1981 disqualifies for unemployment compensation benefits anyone who leaves the military at the end of an enlistment period if he or she was eligible to reenlist. H.R. 4433 (Mr. Mitchell of New York) would repeal the provision enacted in the reconciliation bill. H.R. 4573 (Mr. White) and H.R. 4686 (Mr. Tauke) would modify present law.

4. Exclusion from FUTA of Student Interns over age 21.—Under present law, wages paid to student interns for work performed as an integral part of the student's academic program are not subject to the Federal unemployment tax unless the student is over 21. It has been proposed that the age limitation be removed so that student intern wages would be exempt regardless of the age of the student.

5. Reduction of Unemployment Compensation by the Amount of Pension or Retirement Pay.—Under present law, States are required to reduce a person's weekly unemployment compensation payment by the amount of any work-related retirement pay or pension that is maintained or contributed to by a "base-period" employer. States may limit the reduction by an amount equivalent to any contribution the employee made toward the pension. A number of bills have been introduced that would change current law, including the following: H.R. 422 (Mr. Quillen), H.R. 531 (Mr. Roe), H.R. 1112 (Mr. Hollenbeck), H.R. 1195 (Mr. Solarz), H.R. 1429 (Mr. Ottinger), H.R. 1759 (Mr. Mitchell of New York), H.R. 1885 (Mr. Addabbo), H.R. 1902 (Mr. Downey), H.R. 1970 (Mr. Minish), H.R. 2808 (Mr. Weaver), H.R. 3486 (Mr. Bingham), S. 577 (Mr. Moynihan).

6. Exclusion of Certain Fishermen from FUTA.—Section 822 of the Economic Recovery Tax Act of 1981 excluded remuneration paid to certain fishermen from the Federal unemployment tax for calendar year 1981. The exclusion expires December 31, 1981.

Chairman **FORD**. Because of the large number of witnesses, I have requested that the presented testimony be limited to 3 minutes. The full statement will be included in the record. I urge the witnesses to comply with this limitation so there will be time for questions from the subcommittee members.

Also, I would like at this time to recognize the minority ranking member of the committee, Mr. Bafalis of Florida, for any opening remarks that he might have.

Mr. **BAFALIS**. Just briefly to welcome you to the committee, offer my cooperation with you, I think we are off to a good start and I think you will find that all of the members on our side will cooperate with you in your efforts.

Chairman **FORD**. Mighty kind of you. Thank you.

Mr. Anthony, if you have any opening remarks, the Chair will recognize you at this point.

Mr. ANTHONY. I have no remarks pertaining to the jurisdiction of the hearing today other than just to say I am glad to be here, I look forward to working with you and other members of the committee in solving the important issues that will be coming before the subcommittee.

Chairman FORD. Thank you.

We will begin with several witnesses representing the administration: Mr. William Lewis from the Department of Labor; Lt. Gen. R. Dean Tice from the Department of Defense; Mr. J. Gregory Ballentine from the Department of Treasury. I would like for them to introduce their staff as they come to the witness table so we will have their names for the record.

I know there has been a request that you come individually with your own staff, Mr. Lewis, but we would like all three to come with the staffs. If the subcommittee staff would maybe get some other chairs at the witness table for the other staff members of the three administration people, I would appreciate it.

Mr. LEWIS. As you wish, Mr. Chairman.

Chairman FORD. At this time the Chair will recognize Mr. William Lewis from the Department of Labor.

Would you please introduce your staff for the record.

STATEMENT OF WILLIAM B. LEWIS, ADMINISTRATOR, UNEMPLOYMENT INSURANCE SERVICE, EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR; ACCOMPANIED BY JOSEPH HICKEY, CHIEF, DIVISION OF PROGRAM POLICIES AND LEGISLATION, AND JAMES VAN ERDEN, SUPERVISORY ACTUARY, UNEMPLOYEMENT INSURANCE SERVICE

Mr. LEWIS. Good morning, Mr. Chairman.

I am accompanied by Mr. Joseph Hickey to my left, and to his left Mr. James Van Erden of the Department of Labor staff.

Thank you for inviting us to comment this morning on several proposals that are before you.

I have a prepared statement that will be entered into the record as you indicated.

Mr. Chairman, the first proposal before you involves the extension of the Reed Act. The current proposal that we understand you are considering would extend the Reed Act for another 10 years, and also provides that States which were required to use their Reed Act funds for payment of benefits in order to qualify for loans from the Federal Loan Act would be permitted to recoup these amounts from future unemployment compensation taxes after the loans have been paid off.

The administration has no objection to the proposed 10-year extension or the use of Reed Act funds for administrative purposes. We do not recommend in favor of the second part of the proposal. However, we believe that all States should be permitted to restore Reed Act funds used for payment of benefits at State option.

The next proposal concerns extension of exclusion from future coverage of services performed by certain alien farmworkers. At present there is a 2-year exemption permitting aliens to enter the United States to perform agricultural labor under the Immigration

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and Naturalization Act. The administration-cleared statement recommends against extending the exclusion.

The third issue before you, which involves unemployment compensation coverage for ex-service members in the Omnibus Reconciliation Act of 1981, covering former members of the military services, has been limited to individuals whose separation was involuntary and was under honorable conditions.

H.R. 4433, introduced by Mr. Mitchell would repeal the applicable provision of the Budget Reconciliation Act and H.R. 4573, introduced by Congressman White, would amend the requirements to substitute provisions adopted in the House-passed version of the Budget Act. We recommend that neither of these bills be approved, first on the basis of equity among workers and, second, on the basis of cost, H.R. 4433 would eliminate anticipated savings of some $287 million in the current fiscal year and $254 million in fiscal 1983. And H.R. 4573 would cost an estimated $115 million above current law in fiscal year 1982 and another $103 million in fiscal 1983.

The administration has been examining the UCX program and may be making some legislative recommendations in the near future.

The fourth proposal before you concerns removal of a maximum age limit for exclusion from FUTA coverage of services performed by a college or university student in a work-study program. This proposal would remove the age 22-year limitation and would permit exclusion from FUTA taxes of services performed by any student so situated. The administration concurs in this recommendation.

The next set of proposals involves changes in the pension offset requirement in the Federal Unemployment Tax Act. Current law requires that the State unemployment compensation law reduce an individual's weekly benefit by the amount of any pension or retirement income to the extent that the pension was paid for by the base period employer.

There are a number of House bills before you that would eliminate any Federal requirement relating to pension offset and permit States to make their own decisions in this area. Other bills would treat social security and railroad retirement benefits differently and would exempt them from the offset requirement.

The administration believes the present pension requirement in FUTA is an equitable and reasonable one and that present law should be retained.

We estimate the following budget impact of the changes that have been proposed to you.

First, if the Federal requirements were eliminated and all States eliminated the deductions, the impact would be about $442 million in fiscal year 1983; second, if the Federal requirements were eliminated and half of the States eliminated deductions, the impact would be an estimated $221 million in fiscal year 1983; and third, if the social security and railroad retirement were eliminated from the offset, the impact would be about $265 million in fiscal year 1983.

The last issue concerns exclusion from FUTA coverage of services performed by crews of certain fishing vessels. The recently enacted Economic Tax Recovery Act provides a 1-year exclusion from FUTA coverage of services performed by crew members of the fishing vessels with crews of fewer than 10 persons, where compensation is in the form of a share of the proceeds of the catch.

It has been proposed that this exclusion currently due to expire at the end of 1981 be made permanent.

We find no sound basis for removing this group of workers from protection afforded by unemployment compensation at this time. We recommend that the exclusion not be extended but that it be terminated at the end of 1981 as provided in present law.

Thank you, Mr. Chairman. That is the end of my remarks.

[The prepared statement follows:]

STATEMENT OF WILLIAM B. LEWIS, ADMINISTRATOR, UNEMPLOYMENT INSURANCE SERVICE, EMPLOYMENT AND TRAINING ADMINISTRATION, U.S. DEPARTMENT OF LABOR

Mr. Chairman and Members of the Subcommittee: I appreciate this opportunity to appear before you on behalf of the Administration to address a number of bills and legislative proposals which you have under consideration. I am accompanied by Messrs. Joe Hickey and James VanErden.

With your permission, Mr. Chairman, I would like to comment briefly on each of the proposals and then, with my colleagues, respond to your questions.

I. EXTENSION OF THE REED ACT

There is at present a 25-year limit on State use for administrative purposes of excess Federal Unemployment Tax Act (FUTA) levies (beyond those needed to finance the costs of administering the unemployment compensation system) which were rebated to the States in 1956, 1957, and 1958. The authority for the use of such monies will expire in 1981 for 1956 distributions, and in 1982 for 1957 distributions, and in 1983 for 1958 distributions. The current proposal that we understand the committee is considering would extend the time limit for another 10 years, to 1991, 1992 and 1993, respectively. States which were required to use their Reed Act funds for payment of benefits in order to qualify for loans from the Federal loan account would be permitted to recoup these amounts from future employer unemployment compensation taxes after their loans had been paid off.

Total allocations to the States for the three-year period aggregated $138 million. Current unexpended balances by the States, as of June 30, 1981, total some $25 million. In addition, many States have used these federal funds for construction of office buildings, which become the property of the State and the costs of which are being amortized by rental payments made from Federal grants. After amortization is completed, rental costs are reduced to the amount required for maintenance of the buildings. Another State use for administrative purposes has permitted payment for program costs for which Federal grant funds were not available or had been disallowed. Total allocations and current State balances are reflected in an attachment which I will submit for the record.

There are no cost implications in a single extension of the Reed Act provisions since the funds were allocated to the States 10 or more years ago, and if the current balances are not made available for administrative purposes they will continue to be available for payment of benefits.

We therefore do not object to this part of the proposal. We do not, however, recommend that States which have expended Reed Act funds for benefit purposes in order to qualify for loans be permitted to recoup these funds for future administrative purposes unless all States which used these monies for payment of benefits are similarly privileged

II. EXTENSION OF EXCLUSION FROM FUTA COVERAGE OF SERVICES PERFORMED BY CERTAIN ALIEN FARMWORKERS

When the Federal Unemployment Tax Act was amended, effective in 1978, to provide coverage of workers on large farms (with 10 or more employees or a quarterly cash payroll or $20,000 or more), a two-year exemption was provided for aliens permitted to enter the United States to perform agricultural labor under sections 214(c) and 101(a)(15)(H)(ii) of the Immigration and Nationality Act. These are the so-called "H-2" workers who work under contracts approved after certification has been made that domestic labor is not available to fill the jobs for which the aliens are recruited. The two-year extension of the original legislation—to December

31, 1981—also provides that these workers are to be counted for purposes of determining whether an employer meets the 10 workers or $20,000 quarterly payroll criteria.

Proponents of continuation of the exclusion assert that these individuals fill jobs that could not otherwise be filled and that their absence would jeopardize planting and harvesting of certain crops, most notably sugar cane. They also assert that since by the nature of their contract, which requires that they leave the country at the expiration of their work contract, these workers cannot become eligible for unemployment compensation, it is inequitable to require payment of taxes of their earnings.

We would argue that to permit the employment of alien workers without payment of FUTA and State unemployment taxes causes an economic disincentive for employers to actively recruit, train and hire domestic workers by providing an unintended subsidy for employers of foreign workers.

We do not believe that there must be a finding of presumptive unemployment in order to require that services be subject to unemployment taxes. Rather the work itself is part of covered employment under the law and to eliminate any group of workers constitutes an undesirable erosion of the basic coverage of workers as a whole. In addition, the temporary worker proposal of the President's immigration package has also recommended that employers of temporary workers be required to pay the unemployment taxes on the services performed for them by alien workers. It is estimated that the current exclusion results in a loss of $.5 to $2.5 million per year in FUTA and State unemployment compensation taxes. Accordingly, we recommend against the proposal.

III. UNEMPLOYMENT COMPENSATION COVERAGE OF EX-SERVICEMEMBERS

In the Omnibus Budget Reconciliation Act of 1981 coverage of former members of the military services has been limited to individuals whose separation was involuntary and was under honorable conditions. An individual who did not exercise a right to re-enlist is deemed to have quit voluntarily. Under the revised language, however, individuals who were discharged under honorable conditions but who are considered undesirable by the military continue to be eligible for unemployment compensation.

H.R. 4433, introduced by Congressman Mitchell of New York, would repeal the applicable provision of the Budget Reconciliation Act. H.R. 4573, introduced by Congressman White, would amend the UCX requirements to substitute provisions adopted in the House-passed version of the Budget Act. Under this bill, benefits would be payable to individuals who leave the military voluntarily, but increases service time from the present 365 days to 730 days (2 years). Additionally, benefits would not be payable until 4 weeks after separation, and for a maximum of 13 weeks, instead of the present 26 weeks.

We recommend that neither of these bills be approved, first on the basis of equity among workers, and second, on the basis of cost.

H.R. 4433 would repeal the Budget Reconciliation Act provisions and permit payment of benefits to any individual who chose voluntarily not to re-enlist when eligible to do so. It would eliminate anticipated savings of $287 million in fiscal year 1982 and $254 million in fiscal year 1983, or well over half a billion dollars in the next two years.

H.R. 4573, while extending the period of service required to qualify and reducing the duration of benefits, would nonetheless permit payment to individuals leaving the military voluntarily. Additional costs above current law would be an estimated $115 million in fiscal year 1982 and $103 million in fiscal year 1983, for a total of approximately $218 million in that two-year period. We have been examining the UCX program and may be making legislative recommendations shortly.

IV. REMOVAL OF A MAXIMUM AGE LIMIT FOR EXCLUSION FROM FUTA COVERAGE OF SERVICE PERFORMED BY A COLLEGE OR UNIVERSITY STUDENT IN A WORK-STUDY PROGRAM

Current law excludes from coverage services performed by a student under the age of 22 who is a full-time student enrolled in a work-study or internship program, if such service is an integral part of the program and the educational institution has so certified to the employer.

This proposal would remove the age 22 limitation and would permit exclusion from FUTA taxes (with State unemployment compensation laws expected to follow with a similar exclusion) of services performed by any student so situated. We concur in this recommendation.

We have searched the congressional records of the hearings and committee deliberations with respect to this provisions which was adopted in 1970, and find no basis for the age 22 limitation. Presumably it was based on the assumption of a four-year baccalaureate program for students entering at age 18. The present provision therefore eliminates many 5-year undergraduate programs (which are frequently used in work experience curricula) and all graduate programs. It similarly would not qualify veterans of the military and others who worked for a period of time before engaging in post-high school studies. No significant revenue loss is anticipated.

V. CHANGES IN PENSION DEDUCTION REQUIREMENT IN FUTA

Current law requires under the Federal Unemployment Tax Act (FUTA), as a condition for offset credit by the employers in a State, that the State unemployment compensation law reduce an individual's weekly benefit by the amount of any pension or retirement income, to the extent that such pension was paid for by the base period employer. This includes a reduction of 50 percent of the amount of primary Social Security or Railroad Retirement benefits. A State may, at its own option, provide for further reduction, and some do, for example, provide that all pension amounts be deducted, whether or not the pension relates to the base period upon which the unemployment compensation is based.

A number of House bills would eliminate any Federal requirement relating to pension deduction and permit States to make their own decisions in this area. These bills include: H.R. 531 (Mr. Roe), H.R. 1195 (Mr. Solarz), H.R. 1429 (Mr. Ottinger), H.R. 1885 (Mr. Addabbo), H.R. 1970 (Mr. Minish), and H.R. 2808 (Mr. Weaver). H.R. 422, introduced by Mr. Quillen, would eliminate primary Social Security and Railroad Retirement benefits from the requirement. H.R. 1902, introduced by Mr. Downey, would eliminate the present Federal requirement and would add a new requirement, prohibiting a State from deducting Social Security or Railroad Retirement payments from unemployment compensation.

We believe the present pension requirement in FUTA is an equitable and reasonable one. An employer should not be required to pay twice for the costs of compensating a former employee during a period of unemployment. This was previously the case in States which permitted payment of unemployment compensation to pensioners without any offsetting reduction for employer-financed pension payments. The present requirement applies only to a pension to which the employer has contributed, and only to the extent of his participation in its cost. A pension for prior service, not related to base period employment, is not required to be included. Also, only 50 percent of primary Social Security or Railroad Retirement payment is required to be deducted, recognizing that the worker matches the employer contribution in supporting these programs. We believe Congress has evolved a sound and equitable approach to this problem and do not believe any change is desirable.

We estimate the following budget impact of the changes that have been proposed.

1. Additional annual (fiscal year 1983) benefit costs if Federal requirements were eliminated and all States eliminated deductions: $442 million.
2. Additional annual (fiscal year 1983) budget costs if Federal requirements were eliminated and half of States eliminated deductions: $221 million.
3. Additional annual (fiscal year 1983) benefit costs if Social Security/Railroad Retirement were eliminated from requirement: $265 million.

VI. EXCLUSION FROM FUTA COVERAGE OF SERVICES PERFORMED BY CREWS OF CERTAIN FISHING VESSELS

A provision of the recently-enacted Economic Tax Recovery Act provides a one-year exclusion from FUTA coverage of services performed by crew members of fishing vessels with crews of fewer than 10 persons where remuneration is in the form of a share of the proceeds of the catch. It is proposed that this exclusion, currently set to expire at the end of 1981, be made permanent. The exclusion parallels one in the Federal Insurance Contributions Act (FICA).

We estimate that from 50,000 to 60,000 individuals may be involved. It has been difficult to establish just how many workers are removed from coverage by this size-of-crew cutoff. Present FUTA provisions provide coverage for crews involved in the catching of salmon or halibut, for commercial purposes, and service performed in connection with a vessel of more than 10 net tons.

We find no sound basis for removing this group of workers from protection afforded by unemployment compensation. These individuals are already at risk with respect to the income to be derived from their labor. The 1981 exclusion now deprives them of protection during unemployment which occurs when they cannot work in the fishing industry, generally for seasonal causes. The exclusion not only removes them from possible eligibility for benefits if their earnings are solely from fishing but also reduces or eliminates possible eligibility that they would have by combining income from fishing with income in covered employment during other periods of the year. This is inequitable in that it deprives these workers of the coverage which now extends to virtually all workers in our economy. Workers engaged in the fishing industry in general are covered, as are workers in a broad variety of jobs where remuneration is in the form of commissions of profit-sharing. A comparison of FUTA and FICA coverage in this instance is inappropriate since under FICA an employee may elect coverage but under FUTA they may not. We recommend that the exclusion not be extended but that it be terminated at the end of 1981, as provided in present law.

SUMMARY

In summary, we have the following recommendations for the subcommittee:

I. Extension of the Reed Act

We do not object to the proposed 10-year extension of the use of Reed Act funds for administrative purposes. If States are permitted to recoup Reed Act funds used for payment of benefits in order to qualify for loans, we believe all States should be permitted to restore Reed Act funds used for payment of benefits, at State option.

II. Exclusion of services performed by certain alien farmworkers from FUTA coverage

We recommend against extension of the exclusion.

III. Unemployment compensation for ex-servicemembers

We recommend against enactment of the bills before you. The recommended changes of those bills would have a major negative budget impact. We have been examining the UCX program and may be making legislative recommendations shortly.

IV. Removal of 22-year age limit on FUTA exclusion of services performed by students in work experience or internship programs

We recommend approval.

V. Changes in FUTA pension deduction requirement

We recommend that present requirement be retained.

VI. Exclusion of services performed by crews of certain fishing vessels (now limited to calendar year 1981)

We recommend that the exclusion expire, as in present law, in December 1981.

Mr. Chairman, we may have a number of technical changes to the unemployment compensation programs which we will be willing to discuss with the Subcommittee. This concludes my formal statement. We would be pleased to respond to any questions you may have.

Bureau of Employment Security
Form ES-203.4 (7-61)

TUMST

[illegible] 11 TITLE IX - REED ACT

As of 4/30/81

UNITED STATES	1 Allocated/ To States	2 Redeposits (Amortized)	3 Total (1+2)	4 Obligated for Admin.	5 Balance (3-4)	6 Used For Benefits	7 Balance (5-6)	8 Expiration '56 Allot.	9 Balance (7-8)
Alabama	1610533	1603018	3213551	2426403	787148	600628	186520	363917	(127397)
Alaska	186765	-0-	186765	-0-	186765	-0-	186765	43345	143420
Arizona	657805	922944	1580749	1110479	470270	-0-	470270	157032	319243
Arkansas	722072	860900	1582972	1317371	265601	265653	52	176352	(176404)
California	13351082	7374491	20725573	17022236	3703337	-0-	3703337	3206479	496858
Colorado	1030456	-0-	1030456	6575	1023881	-0-	1023881	230101	793780
Connecticut	2708467	2427852	5136323	2747375	2388948	2388948	-0-	657714	(657714)
Delaware	510,000	-0-	510000	-0-	510000	510,000	-0-	119562	(119562)
District of Columbia	746053	-0-	746053	-0-	746053	746053	-0-	186092	(186092)
Florida	2362939	-0-	2362939	-0-	2362939	2362939	-0-	490994	(490994)
Georgia	2172229	2075230	4247459	4100357	147102	-0-	147102	503929	(356827)
Guam	0								
Hawaii	333610	318179	651789	390067	261722	174946	86776	81925	4851
Idaho	360889	716386	1077275	1181869	(104594)	0	(104594)	87634	(192228)
Illinois	9821693	-0-	9821693	-0-	9821693	9821693	-0-	2386444	(2386444)
Indiana	4003594	3146358	7149952	6669291	480661	-0-	480661	974221	(493560)
Iowa	1406442	1406442	2812884	2048021	764863	-0-	764863	332161	432702
Kansas	1206404	1748380	2954784	1840580	1114204	-0-	1114204	289064	825140
Kentucky	1499886	-0-	1499886	-0-	1499886	1499886	-0-	369690	(369690)
Louisiana	1809687	2967695	4777382	3374579	1402803	-0-	1402803	426159	976664
Maine	642049	805151	1447200	950925	496275	794713	298438	152664	(451102)
Maryland	2280246	1053827	3334073	1888468	1445605	918692	526913	555413	(28500)
Massachusetts	5058610	-0-	5058610	599884	4458726	4458726	-0-	1256931	(1256931)
Michigan	7307115	-0-	7307115	-0-	7307115	7307115	-0-	1847064	(1847064)
Minnesota	2212224	1679896	3892120	2185505	1706615	1597273	109342	532978	(423636)
Mississippi	683903	1401176	2085079	1756426	328653	-0-	328653	153861	174792
Missouri	3201112	7019153	10220265	9464381	755884	-0-	755884	768937	(13053)
Montana	404274	362000	766274	668000	98274	6274	92000	99894	(7894)
Nebraska	680694	1170985	1851679	1305854	545825	-0-	545825	162275	(383550)
Nevada	289986	-0-	289986	226601	63385	202406	139021	75287	(214708)
New Hampshire	471553	-0-	471553	-0-	471553	-0-	471553	118141	353412
New Jersey	5578887	-0-	5578887	-0-	5578887	5578887	-0-	1380440	(1380440)
New Mexico	467105	1002694	1469799	897953	571846	-0-	571846	109566	462280
New York	17430423	20805306	38235729	20413352	17822377	17430423	391954	4244089	(3852135)
North Carolina	2545480	-0-	2545480	-0-	2545480	-0-	2545480	595802	1949678
North Dakota	199695	23470	223165	-0-	223165	-0-	223165	43741	179424
Ohio	9344524	9551122	18895646	18007535	888111	888111	-0-	2340669	(2340669)
Oklahoma	1231053	-0-	1231053	-0-	1231053	-0-	1231053	291235	939818
Oregon	1435713	1226180	2661893	2239820	422073	60193	361880	321590	40290
Pennsylvania	10708640	-0-	10708640	-0-	10708640	10708640	-0-	2675382	(2675382)
Puerto Rico	0								
Rhode Island	841654	-0-	841654	-0-	841654	841654	-0-	193763	(193763)
South Carolina	1179069	1379779	2558848	1945924	612924	-0-	612924	285873	327051
South Dakota	208586	-0-	208586	-0-	208586	-0-	208586	47634	160952
Tennessee	1977194	2300747	4277941	3396434	881507	-0-	881507	466435	415072
Texas	5653210	9004064	14657274	13139569	1517705	-0-	1517705	1295318	222387
Utah	547408	-0-	547408	-0-	547408	-0-	547408	132359	415049
Vermont	235657	-0-	235657	235657	-0-	-0-	-0-	54600	(54600)
Virginia	2066972	3332866	5399822	4589262	810560	-0-	810560	477482	333078
Virgin Islands	0								
Washington	2187492	2159148	4346640	2642454	1704186	891651	812535	545202	267333
West Virginia	1289839	-0-	1289839	-0-	1289839	1289839	-0-	300255	(300255)
Wisconsin	2956828	3327915	6284743	4723507	1561236	-0-	1561236	722623	838613
Wyoming	206945	-0-	206945	-0-	206945	-0-	206945	37308	169637
	138024750	93173358	231198088	135512709	95685379	71345343	24340036	33376031	(9035995)

Chairman FORD. Thank you very much, Mr. Lewis.

At this time the Chair will recognize Lieutenant General Tice.

STATEMENT OF LT. GEN. R. DEAN TICE, DEPUTY ASSISTANT SECRETARY OF DEFENSE (MILITARY PERSONNEL AND FORCE MANAGEMENT), ACCOMPANIED BY WILLIAM R. AMIS, ASSISTANT DIRECTOR, COMPENSATION BRANCH, AND LT. COL. ROBERT BAKER, ASSISTANT DIRECTOR OF PERSONNEL ADMINISTRATION AND SERVICES

General TICE. Sir?

Chairman FORD. For the record, lieutenant general, introduce your staff persons.

General TICE. I am the Deputy Assistant Secretary of Defense for Military Personnel and Force Management.

Today I am accompanied by Mr. William R. Amis, Assistant Director, Compensation Branch, and Lt. Col. Robert Baker, Assistant Director of Personnel Administration and Services.

It is a pleasure to appear before the committee as you explore the various aspects of unemployment compensation issues. My remarks will be left here for the record.

Chairman FORD. They will be made a part of the record.

General TICE. I will make just a very short statement.

The Department of Defense recognizes, as has the committee, that the unemployment compensation benefit has in the past materially assisted members terminating their service.

The three bills that you have before you today, 4433, 4573, and 4686, would amend certain sections of title V, United States Code, dealing with ex-servicemen's unemployment compensation benefit. In general terms, they would either repeal the amendments of Public Law 97-35 or return the service requirements to what they were before Public Law 97-35 and limit the time period for benefit payments or extend the continuous service requirement to 730 days, return the character of service to the pre-Public Law 97-35 standard and limit the period for benefit payments.

I can assure you that the Department of Defense has been working closely with the Department of Labor for the implementation of the most recent legislation that was passed in August. Since these bills impact on the unemployment compensation program administered by the Department of Labor, we defer to them as representing the administration's position. However, I will be glad, with assistance of my staff here, to answer any specific questions that you have with respect to the impact these bills have on service personnel.

[The prepared statement follows:]

STATEMENT OF LT. GEN. R. DEAN TICE, DEPUTY ASSISTANT SECRETARY OF DEFENSE (MILITARY PERSONNEL & FORCE MANAGEMENT)

Mr. Chairman and Members of the Committee: I am Lieutenant General R. Dean Tice, the Deputy Assistant Secretary of Defense for Military Personnel and Force Management. Accompanying me today is Mr. William R. Amis, the Assistant Director of Compensation, and Lieutenant Colonel Robert Baker, Assistant Director of Personnel Administration and Services. It is a pleasure to appear before the Committee as you explore various aspects of unemployment compensation issues. My remarks today will be confined to those that specifically concern members and former members of the armed forces.

The Act of August 28, 1958, created a program of Unemployment Compensation for Ex-Servicemen (UCX) effective October 1, 1958. Under that UCX program, members became eligible for benefits if the service was continuous for 90 days or more, or was terminated earlier because of an actual service-incurred injury or disability. Additionally, a member must have been discharged or released under conditions other than dishonorable, and could not have a bad conduct discharge, or if an officer, could not have resigned for the good of the service. The eligibility criterion was changed by Public Law 96-364 in September, 1980, by imposing a 365 continous day rule. On August 13, 1981, the eligibility requirements were again revised by Pub. L. 97-35—this time by addressing the nature of the military service performed. With respect to that service, a member currently must be discharged or released under honorable conditions. Also, a member cannot resign or voluntarily leave the service, and cannot be released or discharged for cause as defined by the Department of Defense and retain eligibility for UCX.

Mr. Chairman, we have been working closely with the Department of Labor to ensure the orderly implementation of the recent law. For the Committee's information, I would like to summarize the types of discharges and releases that we have, and how they relate to unemployment compensation eligibility.

To be eligible for unemployment compensation under existing law, the servicemember must have been discharged under honorable conditions. This includes the Honorable and the General (under Honorable Conditions) Discharge. An honorable discharge is a separation given for honest and faithful service, predicated on proper military behavior and proficient performance of duty with consideration for the member's age, length of service, grade and general aptitude. A general discharge is a separation under honorable conditions which is issued when a member's military record is not sufficiently meritorious to warrant an honorable characterization.

Those members receiving an Under Other Than Honorable Conditions Discharge, a Bad Conduct Discharge, or Dishonorable Discharge would not be eligible. An Under Other Than Honorable Conditions Discharge characterization may be appropriate when a member is separated for misconduct or security upon the approved recommendation of an administrative discharge board or the waiver of the right to such board action, or upon resignation or request for discharge for the good of the service in lieu of trial by court-Martial. The Bad Conduct and Dishonorable Discharge are punitive in nature and can be adjudged only by sentence of a special or General Court-Martial.

Those members who resign or voluntarily leave the service are denied eligibility for UCX. This includes members who request discharge or release for such reason as hardship, conscientious objection, pregnancy, retirement or to attend school. Also denied eligibility are members who are eligible, but decline to reenlist upon completion of their term of service. The current law was enacted in response to a specific recommendation of the Administration. Legislative history indicates that those members who were denied reenlistment and must be discharged or released upon completion of their term of service are eligible for unemployment compensation. There are a host of reasons for denying reenlistment that range from a poor disciplinary record to low aptitude scores, failure to demonstrate job proficiency, and failure to meet educational or weight standards.

Those members who are released or discharged for cause prior to the completion of their term of service are not eligible for UCX. Some examples are misconduct, unsuitability, drug or alcohol abuse, and substandard performance of duty. We are continuing to work with the Department of Labor to simplify procedures that would enable them expeditiously to determine an ex-serviceman's eligibility for UCX.

Mr. Chairman, another feature of the unemployment compensation law impacts on members. These are retired members of the armed services. Retired members in the past were eligible for unemployment compensation. However, Public Law 94-566 amended the unemployment compensation legislation to the effect that any military or civilian individual receiving a government pension, retired pay, or other similar payment should have an unemployment check reduced by an amount equal to the amount of such pension or retired pay. That original law was to take effect on October 1, 1979, and applied to civilians as well as retired military members. The law was not to be operative until 1979 to permit the National Commission on Unemployment Compensation an opportunity for a thorough study of the issue, and to allow the Congress to act in light of the Commission's findings and recommendations. Public Law 94-566 was amended, however, by Public Law 95-19. The amendment delayed the effective date for the limitation on receipt of unemployment compensation until March 31, 1980.

Recognizing that the law was denying benefits to certain individuals, the Congress enacted Public Law 96-364 which changed the bar for receiving unemployment compensation. Under this law, the reduction of unemployment compensation is required only when the "base period employer" is the one providing the retired pay. This means that an employer is not required to pay twice (once for retirement and once for unemployment compensation) for the cost of compensating a former employee during a period of unemployment. Consequently, a member just retired from the military would still be subject to the unemployment compensation reduction. However, many who become separated from their post-military employers in the future will normally be unaffected by the requirement for a benefit offset since the "base period employer" would not be the one from which retired pay is received.

The Department of Defense recognizes, as has the Committee, that the unemployment compensation benefit has materially assisted members terminating their service. Several legislative proposals, namely H.R. 4433, H.R. 4573, and H.R. 4686, would amend section 8521 of title 5, United States Code, dealing with the exserviceman's unemployment compensation benefit. Generally, they would either (1) repeal the amendments of Public Law 97-34, or (2) return the service requirements to what they were before Public Law 97-35 and limit the time period for benefit payments, or (3) extend the continuous service requirement to 730 days, return the character of service to the pre-Public Law 97-35 standard, and limit the period for benefit payments. Since these bills impact on the UCX program administered by the Department of Labor, we defer to them as representing the Administration's position.

Mr. Chairman, this concludes my statement. We will be glad to reply to any questions that the Committee may have.

Chairman **Ford**. Thank you very much, Lieutenant General Tice.

At this time the Chair will recognize Mr. J. Gregory Ballentine, the Deputy Assistant Secretary for the Department of Treasury.

STATEMENT OF J. GREGORY BALLENTINE, DEPUTY ASSISTANT SECRETARY (TAX ANALYSIS), DEPARTMENT OF THE TREASURY, ACCOMPANIED BY TOM NEUBIG AND CHRISTINE VAUGHAN

Mr. **Ballentine**. Thank you, Mr. Chairman.

I am accompanied by Tom Neubig and Christine Vaughn from the Office of Tax Policy.

I am pleased to have the opportunity to appear before you to discuss three proposals to continue the temporary exclusions of certain types of workers from the Federal Unemployment Tax Act [FUTA].

The three groups proposed for exclusion are (1) student interns age 22 or over, (2) alien agricultural workers legally and temporarily admitted to the United States, and (3) certain fishermen operating in crews of fewer than ten individuals. Treasury does not oppose the exclusion of the older student interns from FUTA, but does oppose extension of the temporary exclusion for alien farmworkers and certain fishermen. None of these proposals would have any significant revenue impact.

As announced by the President, Treasury is examining several outmoded tax incentives and the current personal tax treatment of unemployment insurance [UI] benefits is included among the topics being examined. My testimony today is, however, limited to the three proposals mentioned.

PROPOSALS TO EXCLUDE CERTAIN WORKERS FROM THE FEDERAL UNEMPLOYMENT TAX ACT: 1. STUDENT INTERNS AGE 22 OR OLDER (CODE SECTION 3306(C)(10)(C))

Current law excludes from FUTA the employment of an individual under the age of 22 participating in a student internship program. The individual must be enrolled at a nonprofit or public educational institution as a student in a full-time program which provides credit for an approved work experience.

H.R. 3253 would remove the age limitation on the exclusion of student interns from FUTA. Current law makes an artificial distinction between student interns solely on the basis of age. Consistent treatment of similar workers argues for either excluding older student interns or including younger interns in temporary work experience as part of a full-time educational program, coverage under the unemployment insurance program is inappropriate. The FUTA tax system should be made nondiscriminatory with respect to the age of student interns. Treasury would not oppose the permanent exclusion from FUTA of student interns age 22 or over.

2. CERTAIN AGRICULTURAL WORKERS (CODE SECTION 3306(C)(1))

Current law excludes from FUTA the wages paid to alien farm workers who are legally and temporarily admitted to the United States under the Immigration and Nationalization Act to perform agricultural labor services when unemployed persons capable of performing such services cannot be found in this country. The exclusion from FUTA expires on December 31, 1981. No bill has yet been introduced to extend this exemption. We have assumed that if, and when, such a bill is drafted it will be patterned after current law.

Exclusion of alien farm workers from FUTA, but including U.S. citizens doing the same work, will encourage the hiring of aliens in place of U.S. citizens. Further, it will place an administrative burden on the employer to properly calculate FUTA taxes. Consequently, Treasury opposes excluding alien farm workers from FUTA.

3. CERTAIN FISHERMEN IN CREWS OF FEWER THAN 10 INDIVIDUALS (CODE SECTION 3306(C)(17))

Finally, I would like to discuss the proposed exclusion from FUTA tax of certain fishing boat services. Prior to the passage of ERTA, the services of crew members of fishing vessels were excluded from FUTA coverage unless the vessel was engaged in commercial fishing for salmon or halibut, and the vessel weighed more than 10 net tons. The Economic Recovery Tax Act of 1981 modified the FUTA exemption to correspond to the exclusion from FICA taxes applicable to services performed by the crew members of fishing boats with crews of less than 10 persons, where remuneration is a share of the boat's catch, or cash proceeds from the sale of a share of the catch.

In the case of a fishing operation involving more than one boat, the FUTA exemption applies if the operating crew of each boat in the fleet is less than 10 persons, and the remuneration is a share of the entire fleet's catch or its proceeds. This modified exclusion applies, however, only to calendar year 1981. The proposal would permanently exempt for FUTA purposes the services of all fishing boat crew members who are exempt for FICA purposes.

The temporary exclusion of these fishermen from FUTA in 1981 did not affect their eligibility for benefits in all states, except one, yet these employers did not have to pay taxes to cover the system's administrative costs. Treasury would oppose extension of the temporary exclusion of these fishermen from the Federal Unemployment Tax Act.

Chairman Ford. Thank you very much, Mr. Ballentine.

Mr. Lewis, let's go back over the list for a minute if you don't mind. We are going to start with the extension of the Reed Act.

I understand the administration is not opposed to a 10-year extension of the Reed Act, is that correct?

Mr. Lewis. That is correct.

Chairman Ford. And the Federal Unemployment Tax Act, the administration's position once again was what for the farm workers?

Mr. Lewis. Alien farmworkers, administration recommended against extending that exclusion.

Chairman Ford. Right.

Now the expiration date is December 31 of this year, is that correct?

Mr. Lewis. That is right.

Chairman Ford. And the administration is in opposition to the extension of the Alien Farm Workers Act, is that correct?

Mr. Lewis. That is correct.

Chairman Ford. That is the position, right?

Mr. Lewis. Yes.

Chairman Ford. OK. The third one was the unemployment compensation coverage for ex-servicemen. I am just trying for my record to make sure that we clearly understand the administration's position.

Now the administration wants to keep present law?

Mr. Lewis. That is correct. The administration is recommending against the two proposals before you.

Chairman Ford. Is there any new language that the administration will recommend to the committee?

Mr. Lewis. At this time, no, sir. However, as you know, all of the entitlement programs are under review by the administration and it could be that the administration would have some proposals before you in the near future. But right now we do not have any.

Chairman Ford. General Tice, have you heard whether the administration will be submitting any new proposals to the Congress as they relate to the ex-servicemen?

General Tice. As to the specifics, no, but we do know it is under review.

Chairman Ford. It is under review now?

General Tice. Yes.

Chairman Ford. OK.

On item No. 4, removal of the maximum age limit, the administration wants to remove the cap in general?

Mr. Lewis. We would recommend approval of the proposal to remove that limitation.

Chairman Ford. OK, remove that limitation.

No. 5, the pension deduction requirement, your position once again with the administration?

Mr. Lewis. We recommend that present law be retained.

Chairman Ford. Retain the present law.

Now what about the exclusion for fishermen?

Mr. LEWIS. The administration recommends that the exclusion expire December 1981 as in present law.

Chairman FORD. All right. Thank you very much, Mr. Lewis. At this time the Chair will recognize Mr. Bailey.

Mr. BAILEY. Thank you, Mr. Chairman.

When we were going over some of the budget considerations, I was very much concerned with ex-servicemen.

You recommend here that we not approve Mitchell's or White's bills changing the requirements on ex-servicemen. What is the rationale for that? I realize the cost, and I also understand the President's view on the voluntary Army. I assume this puts a lot of pressure on these people.

A lot of our servicemen are black and it has not been that long since I have been out of the service. They send money to parents at home, people that need help. Many of our servicemen are poor whites, from rural and urban areas, who send money home. They have no contact, no way to find a job; a matter of 2 days they are separated, they are gone, they don't have anything. They have spent the money that they have been paid; rank is not that high.

What is the deeper rationale, aside from the fact it costs money?

Mr. LEWIS. Mr. Bailey, in your question you put your finger on the two reasons that we have for the current position, which is basically budget impact; and second, that there is an attempt——

Mr. BAILEY. Will you use the mike there?

Mr. LEWIS. There is an attempt to make the unemployment compensation provisions for service persons as similar as possible to nonmilitary occupations.

Mr. BAILEY. Why?

Mr. LEWIS. In effect we are trying to define a voluntary quit.

Mr. BAILEY. Why? This situation is not the same, Mr. Lewis. Why do you want to make it similar to a nonmilitary? It is not the same situation.

Mr. LEWIS. I am saying as long as military service is now voluntary, that there should be some kind of comparable voluntary quit provision for service persons, comparable with those in nonmilitary occupations. That is about as far as I can go in explaining it to you.

Mr. BAILEY. Well, I suspect it is simply the cost issue. You are trying to save a few bucks, either that or pressure somebody into signing up and maintaining your training base, which is a laudable goal. But I think you are going about it in a very unfair way, let me say.

I hope that members of the committee don't take your advice. I am curious, General, I do not know if you feel free to do so, but do you have any personal feelings at all on this? What is your reaction?

I know we have a retention problem. I served on the Armed Services Committee. I am a very strong prodefense advocate but I also believe in a certain amount of justice and reputation for the armed services and what our country stands for to somebody that is in the service, whether they continue or not. The idea of a voluntary continuation is a bunch of nonsense.

You know yourself you have some MOS's where you don't continue people, they don't have reenlistment opportunities in some cases. Would you comment?

General Tice. Of course I support the official position of the administration.

Mr. Bailey. I understand.

General Tice. My personal preference would be, perhaps if we could go back the way we were before. But certainly we have to understand the initiatives to reduce spending of the Government, and I think that the law could be modified or simplified.

It could be stated very simply that an individual would receive unemployment compensation for service-incurred injury or disability, and when there is a reduction in force. You know under the current law, the new law, you still would be entitled for unemployment compensation for medical disability, or if you have reached maximum service, maximum age, general demobilization, or when there is a reduction in force.

I think that the thinking behind this on the part of the administration, if you view the Armed Forces in a strictly voluntary mode, led them to those conclusions.

Mr. Bailey. I agree that was their reasoning and I thank you very much for your obviously honest opinions. I just hope that the subcommittee will not follow Mr. Lewis' advice here or the administration's advice and will do something for ex-servicemen because it is a situation that reflects very badly, should current law continue, on our attitude toward veterans and people who have served and decide not to continue in the service.

Mr. Chairman, thank you for being kind to me with time. Thank you very much.

Thank you, General.

Chairman Ford. Mr. Bafalis.

Mr. Bafalis. Thank you, Mr. Chairman.

Mr. Lewis, in your testimony on H-2 workers you made a statement that I do not want to let stand without it at least being answered. Let me read it to you. You said:

> We would argue that to permit the employment of alien workers without payment of FUTA and State unemployment taxes causes an economic disincentive for employers to actively recruit, train and hire domestic workers by providing an unintended subsidy for employers of foreign workers.

I am certain you are familiar enough with the H-2 program to know that American employers must make a nationwide search not an areawide search, but a nationwide search in order to find domestic employees. They must pay their transportation to the job site and do a number of things. Once they have not been able to find such workers, they then go to the Department of Labor, your very Department.

The Department of Labor makes the determination that an employer has or has not made every effort available to him to find American workers, and if he finds that the employer has done that, that he cannot find enough workers, the employer is then allowed, once he has certified and after the Department of Naturalization and Immigration has certified that they cannot find American workers, to bring in workers for a certain period of time. It is a very costly process they must go through.

I do not want members of this committee to think an employer just arbitrarily makes the decision that he is going to hire foreign workers in lieu of American workers and he goes to the

Department of Labor and they automatically certify that is OK, Immigration and Naturalization says "that is fine." If that is the case, that is an indictment on your Department. I do not think you intend to do that.

Second, you point to an economic disincentive. Well, it is my understanding that when you bring in foreign workers, you have to pay what is called an adverse-effect rate. In Florida this year alone, in the sugarcane industry we are going to have to pay something in the neighborhood of $4.30 or $4.40 in order to bring offshore workers in, while the minimum wage is $3.35. It is my understanding that the cost of bringing offshore laborers in this year will be $148 higher than it would be if we hired American labor. So obviously an American employer is going to want to hire American laborers, it is cheaper.

For us to say now that an employer should pay unemployment compensation tax for people who can never collect the unemployment compensation, and if they do not do it, it is a disincentive and creates this need for getting foreign labor, I do not think is realistic. I do not think really that the Department of Labor feels that way, because if they do, if it were not for some external pressures being put on the Department by certain organizations throughout the country, I do not think you would be here testifying this morning.

Quite frankly, in my judgment, I know in my own congressional district, if we were not able to bring in offshore laborers and if they were not certified by the Department and by Naturalization and Immigration Service, we would not be able to harvest sugarcane.

Now this exemption that is in the law today has been in the law since the forties, almost 40 years. We extended it, as you know, 2 years ago. The very same arguments were made. A majority of the Congress, a vast majority of the Congress agree with my position and the position of others on this committee.

Mr. Chairman, I just wanted to make that statement, because when Mr. Lewis says that it is an economic disincentive to hire American workers, that really is not the fact of the matter.

Chairman FORD. Mr. Lewis, do you care to respond?

Mr. LEWIS. If I may just make a comment.

I am aware of the circumstances in your part of the country. The sugarcane growers in particular have worked very closely with the Department of Labor and have made extraordinary efforts to recruit U.S. workers, and I have personal knowledge of that. On the other hand, as the statement indicates, without considering other costs to growers of recruiting offshore workers which the member accurately cited, the exclusion from the Tax Act in and of itself, not looking at other factors, is, we would maintain, an economic disincentive.

We have found there are some growers—as you know, that the Department of Labor and its State agencies are but brokers in the labor market; we are but intermediaries. A hiring transaction takes place between a worker and an employer, and if an employer is not disposed to hire a U.S. worker because he may have a preference for an offshore worker, there are ways to see that that hiring transaction just does not take place. I am not saying that that happens in the case of sugarcane growers in Florida, but consistently over the years in lower courts the Department has lost decisions in which the courts have said the burden is on the Department to supply the U.S. worker, which is not exactly our interpretation of the act. So all of these things are considered and in the President's package that has recently been submitted to the Congress on foreign workers.

Mr. **BAFALIS**. If I may respond for a minute. I do not really believe, and I do not know what you believe, that if this exemption were to end, that my sugarcane growers would stop importing foreign workers.

Mr. **LEWIS**. I believe you are right.

Mr. **BAFALIS**. OK. So what you are saying is that we still ought to go ahead and collect moneys that are never going to be paid out to the people we are collecting them for.

Mr. **LEWIS**. I do not want to extend the argument any except that the presumption of future disemployment has never, to my knowledge, been a consideration in deciding whether or not a class of worker would be covered under unemployment compensation.

Mr. **BAFALIS**. The argument is used all the time. Many people never collect unemployment compensation, yet the employer pays for them. The difference is like an insurance policy, if there is some period in their employment when they are unemployed, they have the right to collect that unemployment, but as it relates to offshore workers, they never have that right.

I do not have anything further, Mr. Chairman.

Chairman **FORD**. The Chair recognizes Mr. Anthony.

Mr. **ANTHONY**. Thank you, Mr. Chairman.

I would like to get a little bit more elementary with my questions, in that I am not as familiar with the program as Mr. Bafalis is. Do you have in your facts with you the number of alien farm workers certified for employment in 1980?

Mr. **LEWIS**. The number of jobs certified for employment under the H-2 program, which is really the one we are talking about, have ranged between 15,000 and 20,000 per year over the last decade, and in the last complete year, roughly 18,300 jobs were certified.

Mr. **ANTHONY**. That was in the last year?

Mr. **LEWIS**. That was in fiscal year 1980.

Mr. **ANTHONY**. 18,300?

Mr. **LEWIS**. 371, as I recall.

Mr. **ANTHONY**. 371. Could you give me a breakdown of the agricultural industries and States involved?

Mr. **LEWIS**. We can provide it for the record, but predominantly it is sugarcane, apples, and sheepherding.

Mr. **ANTHONY**. Where does the sheepherding take place?

Mr. **LEWIS**. Out in Colorado and the Western States.

Mr. **ANTHONY**. Sugarcane, Florida?

Mr. **LEWIS**. Predominantly Florida. Apples predominantly New York State, Virginia, and West Virginia.

Mr. **ANTHONY**. Going back to the statement you made or the question you answered that you act as a broker, and if the farmer is not disposed to hire American workers he can find ways to get around hiring American workers. During the course of the certification process is there any step in there that would make it very difficult for that domestic employer to actually have that malintent? Is there any requirement in the advertising, in the certification process that the Department of Labor can utilize or seize upon to make it more difficult for that——

Mr. LEWIS. As well as it can within current resources the Department attempts to ascertain that adverse-effect wage rates were offered, that the employer made reasonable efforts to recruit U.S. workers, and that employment of aliens would not adversely affect similarly employed U.S. workers.

On the other hand, U.S. workers in a free labor market as we have are free to go to an employer or not go, as they may choose, and working conditions and the like of that employer govern those individual decisions.

Mr. ANTHONY. It would seem to me that if the Department of Labor over the multitude of years that this exemption has been in force—I assume you are not making a blanket indictment of all prospective employers.

Mr. LEWIS. I certainly am not.

Mr. ANTHONY. So during the course of the time you have developed some type of proof, be it circumstantial or direct, you could put that into administrative court or just put it in your file because you have a strong suspicion, at least you have zeroed in on some individuals? If you do not have a blanket indictment, at least you have a partial indictment. If you do have a partial indictment, you have to have some names of some people involved, be they in Florida, amongst the sheepherders out West, you have got to have some people your are suspicious of.

Mr. LEWIS. Where we detect violations of law we call it to the attention of the employer.

Mr. ANTHONY. I guess what bothers me, and this is something that I have seen developed all year long. The previous year really zeroed in on it. Then after you look at the ones that you support and the ones that you do not support, the proposed pieces of legislation, it appears to me that those that have a budgetary impact, those that you can shift the burden off the Federal rolls to someone else and collect some money, then you make a policy decision you are for or against that based on dollars than for no other policy? I must admit, and I am not just saying this to you, Mr. Stockman has been before the Budget Committee where I served before I came here. Over the past 10½ months it has become obvious to me that other policy decisions are not taken into consideration near as much or on an equal basis as the dollars. I just query if this is not your driving force here, then you do look for other justifications and reasons for the paragraph that you put on page 4 that I think has been adequately cross examined and shot down.

Mr. LEWIS. Mr. Anthony, citing budget impact, we believe it is our obligation, and it is actually intended to be a service given the responsibilities of the Congress in dealing with their budget situation, we believe we are in the best position to calculate those cost impacts. That is why we cite them.

Mr. ANTHONY. I guess what bothers me is I am stuck with my own personal conclusion based on 10½ months of experience. Then when you do make statements that certain American employers are not disposed to hire American workers but find ways to get around and hire foreign workers, it almost tells me that that is an indictment of your own Department, that over the last 41 years that if you have not been able to zero in on those that you think are guilty of that particular practice and not submit corrective regulations or improvements in the law so that you can continue to throw up roadblocks, it appears to me that it is more of an indictment of the Department than it is an indictment of the exemption.

Mr. **Bafalis**. Would the gentleman yield on that point?

Mr. **Anthony**. Yes.

Mr. **Bafalis**. You have made a point that we made 2 years ago when we had this debate, that if there is a problem with certification, then there ought to be some changes made in the law as to how certifications are brought about, and not try to come in the back door through an exemption on unemployment compensation. If there are problems with the program, we ought to deal with it in that area, and not try to deal with it in this area.

Mr. **Anthony**. I do not claim to be an expert in this. All I try to bring to this committee is a little background in reasoning. My previous experience before Congress was as a prosecuting attorney. So when you start talking about indicting people, I do have some experience in what it takes to gather that information, and I must admit that I have done that over the course of time. It appears to me that is exactly what they have failed to do. Not having been here 2 years ago, I guess I would pursue the same course. But anyway, I yield. I have talked too long on that particular point. But I would suggest, just speaking as the newest member of this committee, that if you feel that is a problem I would encourage you to make some recommendations to the committee as to how the certification process could be tightened down.

The only experience I have from my State is that we have some migrant workers come in from the country of Mexico on a periodic basis to harvest vine-ripened tomatoes. I know over a period of time it has been totally impossible to hire American labor. I do not care what price you pay, because they consider it stoop labor, they will not do it. As a result, in order to keep those farmers alive they have been forced to go to an alternate labor market, not that they wanted to, but just simply in order to be able to harvest their crops. It is that limited experience that I come in with and ask these questions, and yield back, Mr. Chairman.

Chairman **Ford**. Thank you, Mr. Anthony. Would you like Mr. Lewis to respond?

Mr. **Anthony**. Yes, obviously.

Mr. **Lewis**. Mr. Anthony and Mr. Bafalis, both, your point is well taken. The regulations governing the foreign-worker activities now stack probably this high [indicating] built up over the years because of various adversarial proceedings before the courts, and that is one of the many reasons why the President has seen fit to propose to the Congress that the procedures be simplified.

Chairman **Ford**. Mr. Rousselot.

Mr. **Rousselot**. Thank you, Mr. Chairman.

I know that our discussion here is somewhat limited, but since we are talking about unemployment compensation I thought I would ask Mr. Ballentine: This subcommittee during the reconciliation process voted to take into consideration changing the tax exclusion from unemployment income for a couple. They are now excluded up to $25,000, and a single person up to $20,000. In your search for finding ways that we can improve—I think it is called revenue enhancement, now, isn't it—have you thought about reducing the exclusion for a couple? I think we voted to reduce it for a couple from $25,000 to $15,000, and for a single person from $20,000 to $12,000. There seems to be some support for that effort. Would you have an objection if we changed that exclusion?

Mr. BALLENTINE. I could not say now precisely what change I would object or not object to. As I said, we are in fact looking at the unemployment benefits, how they are treated for tax purposes, because we do believe that the incentives structured under that program are not the ones that are best. Certainly if you do change that program one of the most direct ways to make changes is exactly the kind you are talking about.

Mr. ROUSSELOT. Could you respond to the committee and let us know from the Treasury what your thoughts would be on that?

Mr. BALLENTINE. Certainly. We could give you a response and general thoughts on that, and would anticipate being more specific.

Mr. ROUSSELOT. What is now in the law was put in place as more or less an afterthought, with some kind of limitation on it. I am not sure we really thought it out at the time.

Mr. BALLENTINE. We would be happy to give you our thoughts.

Mr. ROUSSELOT. I would appreciate it.

Thank you, Mr. Chairman.

[Subsequently, the subcommittee received the following letters:]

DEPARTMENT OF THE TREASURY,
Washington, D.C., November 19, 1981.

Hon. JOHN H. ROUSSELOT,
House of Representatives,
Washington, D.C.

DEAR MR. ROUSSELOT: During my testimony before the House Ways and Means Subcommittee on Public Assistance and Unemployment Compensation, I told you that I would forward Treasury's view on the exclusion of Unemployment Insurance (UI) benefits from the personal income tax. Our view is that the exclusion of UI benefits from income of married couples earning less than $25,000 and single individuals earning less than $20,000 encourages longer spells of unemployment. This provision of the Tax Code is contrary to the Administration's program, which increases incentives for individuals to work and save. Treasury is currently examining several outmoded tax incentives and the income tax treatment of UI benefits is included among the topics receiving serious reexamination. A proposal similar to the one you mentioned is being considered.

Sincerely,

J. GREGORY BALLENTINE,
Deputy Assistant Secretary (Tax Policy).

DEPARTMENT OF THE TREASURY,
Washington, D.C., November 19, 1981.

Hon. HAROLD E. FORD,
Chairman, Subcommittee on Public Assistance and Unemployment Compensation, House of Representatives, Washington, D.C.

DEAR MR. FORD: Following continued analysis after my testimony before the Subcommittee on Public Assistance and Unemployment Compensation on October 28, the Treasury position on the exclusion of certain alien farm workers from the FUTA tax has changed. Treasury now supports the continued exclusion of these workers from the FUTA tax.

The Office of Management and Budget has advised that there is no objection to the presentation of this letter from the standpoint of the Administration's program.

Sincerely,

J. GREGORY BALLENTINE,
Deputy Assistant Secretary.

Chairman FORD. Mr. Moore.

Mr. MOORE. No questions, Mr. Chairman. Thank you.

Chairman FORD. Mr. Lewis, General Tice, I would like to get back to the question of ex-servicemen. Mr. Bailey has some questions about the unemployment benefits. If a person received an honorable discharge or other-than-honorable discharge, basically an honorable discharge, the different branches of service, if you had a surplus in a certain area, would that person be eligible, would he qualify for unemployment compensation if he had an honorable discharge and there was a surplus in whatever profession or whatever skill area that he was trained in, in the military? Would he qualify if he was separated from the service with an honorable discharge but had status that afforded him an opportunity to reenlist, but the branch of service indicated to him that we have a surplus in your area, therefore they would not go on to recruit him or give him a certain code that would say he is qualified to reenlist but at the same time we have a surplus in your given skill, therefore we do not need you?

General TICE. Basically we do not have a discharge classification that says that the skill is surplus. The case that you explained, under the current law, would not be eligible for unemployment compensation.

Chairman FORD. The person would not be eligible?

General TICE. Would not be eligible.

Chairman FORD. Give me a case of a person separated from the service with an honorable discharge that would be eligible for the unemployment benefits.

General TICE. This is the tough point that we have to contend with. If we barred that individual for reenlistment, an administrative process, because of some misconduct or his inability to meet the standards for reenlistment, under the current law he could draw unemployment compensation, whereas in the other case the individual could choose to reenlist and train in another field; therein lies the distinction. One would have an honorable discharge, the other one could have a general discharge but be barred to reenlistment by the Department of Defense or the service, and he would be eligible for unemployment compensation.

Chairman FORD. So a person separating from the service with an honorable discharge would normally be eligible to reenlist?

General TICE. Yes, sir. However, there are some service members who are denied reenlistment even though their record of service is good and they receive an honorable discharge. I am referring to those members who do not meet certain basic eligibility criteria to reenlist such as age, education, aptitude scores, or medical conditions.

Chairman FORD. However, those eligible to reenlist would not qualify for any unemployment compensation benefits.

General TICE. That is correct. There could be difficulty if he did not meet the aptitude skills required into a new field.

Chairman **Ford**. But he could go automatically back into his old field because basically there is no such thing as a surplus?

General **Tice**. Basically there is no such thing as a surplus. We do deny reenlistment in certain MOS's to keep them in balance with the needs of the service. But we normally always give a service member an opportunity to be retrained into the shortage skills.

Chairman **Ford**. Are there any further questions from members of the committee? If not, the committee would like to thank all of you for appearing before the committee.

General **Tice**. Thank you for having us.

Mr. **Lewis**. Thank you, Mr. Chairman.

Chairman **Ford**. The committee will now recognize Senator Charles E. Grassley, from the State of Iowa. We would like to welcome you back to the House side, welcome you to the subcommittee. We thank you for taking the time out of your busy schedule to appear before the committee, Senator.

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator **Grassley**. Thank you, Mr. Chairman, and colleagues with whom I served in the House, and still serve with in the Congress. I consider you all my friends, including the new Members. I appreciate this opportunity to appear before you to testify on this bill that I have introduced. I feel honored that you would decide to consider my legislation for an extension of the Reed Act for an additional 10 years.

The Reed Act is the only act on the books that allows State unemployment funds to be used for administrative purposes. Since its passage in 1954 the Reed Act has been an important source of discretionary funds for State agencies. Using Reed Act funds, State agencies have been able to achieve cost savings primarily through exercising the option-to-purchase clause on office buildings rather than paying increased rental costs.

According to a study performed for the National Commission on Unemployment Compensation by Macro Systems Inc., in fiscal year 1977 an average of 28 percent of the space occupied by State agencies was owned. From those States that appropriate Reed Act moneys the average ownership was 37 percent, compared to only 13 percent in those States not appropriating Reed Act money for administrative purposes. During 1977, according to the same study approximately $11½ million was expended toward building purchase and amortization of the Reed Act accounts. Had the same State agencies chosen to lease that space they could have saved $35½ million in rental cost. Subtracting the former figure from the latter yields a savings of approximately $24 million. Although the gross savings of $24 million cannot be attributed entirely to the Reed Act, the study does point out that it is "a positive example of the advantages for States that have used their administrative flexibility to purchase buildings."

In my own State, Iowa, the general assembly has already enacted legislation to allow the Job Service of Iowa to obligate $750,000 in Reed Act moneys to exercise the option-to-purchase clause on a building it has been leasing since 1967. Purchase of this building is expected to save the State of Iowa $92,316 in administrative costs each year after completion of the amortization period.

To me, the most important feature of the Reed Act is that it has provided States with a certain amount of flexibility, which they have used to their advantage to reduce administrative costs. It serves this worthy purpose without increasing Federal outlays in the long run due to the fact that Reed Act funds would be used to pay unemployment benefits if they were not put to such good use elsewhere.

In addition to extending the Reed Act for an additional 10 years, my bill would allow States that have made expenditures from Reed Act accounts as a condition of borrowing from the Federal Government to restore funds to Reed Act accounts after repaying outstanding Federal loans. Under current law, States do not enjoy this privilege. I do not anticipate that any State which might have used Reed Act moneys to pay benefits as a condition of borrowing will be in a position to take advantage of this provision in the next 10 years. On the other hand, it would become a part of permanent law for use in the future. It would not, of course, permit States that chose to use Reed Act funds to pay benefits to restore them for use for administrative purposes.

Currently, only approximately $25 million is available in the Reed Act accounts of 33 States. Now, Senators and Representatives are not generally known to become excited about such comparatively small sums of money. Nevertheless, Reed Act funds are important to those States that have put them to good use in the past. I hope, therefore, that the subcommittee will act quickly and favorably upon this legislation.

If there are any questions, I would be happy to answer them.

Chairman **Ford**. Senator, how much money is available in your State for the Reed Act account?

Senator **Grassley**. $785,000.

Chairman **Ford**. You mention that the general assembly has enacted legislation to allow the Job Service of Iowa to allocate $750,000 in Reed Act moneys to exercise a contract option for the purchase of a building. From your testimony, I assume the State has had a lease agreement since 1967. Why did they not exercise that purchase agreement before now, in 1967 or 1968? Were those dollars being used for other construction or renovation?

Senator **Grassley**. Mr. Chairman, at this point I am not prepared to give a definite answer to your question. I might speculate that it might be because of the prospect that the fund might have to be used to pay benefits, but that is only speculation on my part.

Chairman **Ford**. And without the extension, what you are saying is that Iowa will not be able to purchase the building?

Senator **Grassley**. If your question is would we have the financial capability of doing it, I would not want to leave you with the impression that the State of Iowa could not, out of other funds, do that. Although, let me say in a very frank and candid way, our State treasury is not in as sound of a position as it has been for the last 10 or 12 years. Until right now the State general fund had been in pretty good condition. But there has been always the intent of the legislature not to use general fund money for purposes for which trust fund money can be used.

So your question relates to the problem as it applies specifically to the State of Iowa.

Chairman **Ford**. I was more concerned about the savings of the $92,000, Senator, that you had here in your statement. I notice you talk about expecting to save the State of Iowa $92,000; that is the point.

Senator **Grassley**. I would ask you to look at it from this standpoint, that if you look at this isolated instance the legislature might not be justified. But if you look at this as being a pattern, in a sense a privilege States have exercised since 1954. All we are asking to do is to allow Iowa and 32 other States to continue to exercise that privilege with a net savings to all States. I might point out that this act has been extended three other times. We are asking for a fourth extension.

Chairman **Ford**. I think it is good that you brought this information to the subcommittee. As we try to mark up a bill maybe in the next couple of weeks, it is important that we know that 32 or 33 States that are involved, where those dollars will be obligated and how they will benefit the States.

Senator **Grassley**. Would you, Mr. Chairman, give me the opportunity to leave the record open for some additional information if either the information I gave you on Iowa is not totally accurate, or there may be other reasons that ought to be given unique to the State of Iowa.

Chairman **Ford**. Yes, Senator; the record will be left open.

[The following was subsquently received:]

The Iowa legislature has passed legislation to enable the Iowa Job Service to use Reed Act funds on two occasions. The first was for the purpose of erecting the present administrative office building, which was occupied in 1963. The second obligation was to erect a new addition to the administrative office building in 1972. Prior to this year, therefore, Iowa's Reed Act funds were tied up in ongoing projects.

Since the Iowa legislature passed legislation to obligate its available Reed Act funds to exercise the option to purchase clause on the building in question prior to the expiration of funds obligated in 1956, the purchase is not contingent on extension of the Reed Act.

Senator **Grassley**. On the other hand, I want to emphasize that this legislation does have the endorsement of the Interstate Conference of Employment Security Agencies.

Chairman **Ford**. The group will be testifying later before the subcommittee, Senator Grassley. So I am sure that they will make their support and endorsement known to us.

Senator **Grassley**. Thank you very much.

Chairman **Ford**. Mr. Anthony.

Mr. **Anthony**. No questions.

Chairman **Ford**. Mr. Bafalis.

Mr. **Bafalis**. Thank you, Mr. Chairman. I just would like to welcome my colleague to our committee. I am not sure whether you got a promotion or not, but we are delighted to have you with us.

Senator **Grassley**. As a Member of the House I would never have admitted it.

Mr. **Bafalis**. Senator, I only have one question. You mentioned in addition to extending the act for 10 years you are also going to allow States who have made expenditures from the Reed Act accounts as a condition of borrowing from the Federal Government to restore funds to the Reed Act account after repaying outstanding principal loans. I understand, under present legislation, this cannot be done. Would you elaborate on that?

Senator **Grassley**. I elaborate from this standpoint. The use of this money to pay unemployment benefits as a condition of borrowing from the Federal Government was mandated by the Congress because borrowing from the Federal Government ought to come only as a last resort. Compelling the States to use up all available funds to pay benefits before they borrow is legitimate, but once that they have reestablished the soundness of their fund, I believe it is equally legitimate to allow them to restore those funds.

Mr. **Bafalis**. Senator, I commend you for your comments. I think what you are trying to do is along the lines of what I hope is a new philosophy here in Washington, giving more authority, continuing authority back to the local level. I do not have any further questions.

Chairman **Ford**. Mr. Moore.

Mr. **Moore**. No questions, Mr. Chairman. I just want to welcome our former House colleague back to the House, and also to tell him I certainly respect his courage as demonstrated yesterday.

Senator **Grassley**. Thank you very much.

Chairman **Ford**. Senator Grassley, let me thank you very much for appearing before us. Once again, I miss walking back with you to the Longworth on the second floor.

Senator **Grassley**. Yes; we accomplished more business and deepened our friendship more on the walks to rollcalls than any other way.

Chairman **Ford**. But you always told me you would carry me with you over there.

Senator **Grassley**. I will tell you, you would be welcome any time, and I will do what I can to help you feel comfortable.

Chairman **Ford**. Do not mention that to Senator Baker, but thank you very much.

Assemblyman Joseph D. Patero, chairman of the Labor Committee of the New Jersey State Assembly is our next witness. We welcome you before the subcommittee Assemblyman Patero. If you don't mind, would you identify for the subcommittee hearing record the person accompanying you.

STATEMENT OF JOSEPH D. PATERO, ASSEMBLYMAN, CHAIRMAN, LABOR COMMITTEE, NEW JERSEY STATE ASSEMBLY, ACCOMPANIED BY DANIEL L. BEN-ASHER, NEW JERSEY OFFICE OF LEGISLATIVE SERVICES

Mr. **Patero**. Yes, sir; I have with me research associate Mr. Daniel Ben-Asher of the New Jersey Office of Legislative Service.

I did send a statement which I would like to have put in the record.

Chairman **Ford**. We do have the statement and it will be made a part of the record.

Mr. **Patero**. Thank you.

I would like to clarify some of the statements before, the difference between the private employee and a veteran. A private employee could get a job, after 9 months he can quit, get another job, get laid off after a period of time, and all this time he could requalify for unemployment insurance, while a serviceman signs up for a period of time and, once he gets discharged, honorable discharge, he cannot collect unemployment and he cannot requalify with the time that he has put in.

The statement was made we are starting to get a lot of youth who are coming in from the rural areas, from the city ghettos, and so forth. I think we are falsifying our advertisements. I have here some of the latest advertisements from the U.S. service which states, if I may read, "Many skills learned in the Army can be used in civilian life, too."

Another one from the Army, "We pay you to train in the field that can lead to a rewarding career."

Another one from the Army which says "This official document which is widely recognized by civilian employers."

The Air Force also has one; I could go on and on. But what we are doing is—I also was a veteran during the Korean war. I joined the service, I was a volunteer. I know the amount of money I was making while I was serving in the service compared to a fellow working in a plant.

Now the veteran is not making that much money in the service, but is putting his time in primarily to learn a trade so when he comes out of the service he can go into a well-qualified, trained job. What we are now telling him, if the fellow is from the cornfields, is "Look, we are not giving you time to go out and look for a job, you have to take the first job because that fellow cannot save enough money to stay out for a period of time to go look for a job." That is why I think it is very unfair this was signed by the President.

Mr. Chairman, I urge you to support House Resolution 4433.

Thank you.

[The prepared statement follows:]

STATEMENT OF HON. JOSEPH D. PATERO OF THE NEW JERSEY STATE ASSEMBLY

Mr. Chairman and members of the subcommittee, good afternoon. My name is Joseph Patero and I am chairman of the State Assembly Labor Committee in New Jersey. I appreciate this opportunity to comment on section 2405 of the Omnibus Budget Reconciliation Act of 1981 dealing with ex-servicemens' benefits, just one of the many issues pending before you today.

Before proceeding further, I might point out to you that I have been the chief sponsor of many Federal unemployment compensation conformity bills in my home State, but am pleased that the recent Federal enactment denying servicemens' unemployment benefits did not require State action for I would certainly not have supported it.

Section 2405 of the Reconciliation Act, which will deprive thousands of patriotic Americans of unemployment compensation benefits in the months and years ahead is having the effect of eliminating eligibility for unemployment benefits for most of this State's servicemen and women. To add insult to injury, many ex-service members who made a substantial commitment of time to serve their nation for several years and who are honorably discharged—but decided against re-enlisting—will be severely penalized for so doing by being barred from collecting benefits. At the same time, many of those whose conduct or performance was less than meritorious and who were not granted the privilege of re-enlisting, but received honorable or general discharges, will collect. As a veteran of the Korean conflict, I find this situation abhorrent.

Surely the term of service mandated by enlistment cannot reasonably be compared to employment in civilian life. For many, many enlistees, there is no parallel between the virtually irreversible commitment of time and the sacrifice of a normal family life one consents to upon enlistment and the flexibility of career and marital decisionmaking that is presented to a young man or woman in civilian employment. After 3 or more years in the service, an enlistee should be thanked for his sacrifices (especially in times of war) and not subjected to being stripped of the modest financial cushion that ex-servicemen deserve and have used for years to tide themselves over while looking for a civilian job in which they can utilize their new service-acquired skills.

Gentlemen, I have bought with me the most updated U.S. Military recruitment brochures that were available in Trenton to demonstrate to you that the United States Government is truly failing to tell it as it is. On the one hand, the military is enticing young men and women into the service as, among other things, a training ground for future success in civilian careers. On the other hand, with the enactment of section 2405 of the Budget Reconciliation Act, it is saying to these same young people, that if you are honorably discharged and decide not to make a repeat long-term commitment to the military, we are going to make it a lot harder for you to make the transition back into civilian life by cutting off future benefit entitlement.

Gentlemen, I sincerely urge you to repeal (or at least soften) this unfair section and return the law to its earlier, more equitable state.

Chairman FORD. Assemblyman Patero, I think Mr. Lewis and General Tice indicated earlier, in response to questions from members of the subcommittee, that those receiving an honorable discharge would in fact have the opportunity to reenlist, even if there was a surplus in the skill or trade that they had learned in the military, and that they would be given the opportunity to enter another trade. What is your response to their testimony?

Mr. PATERO. Well, Mr. Chairman, we should change the term of service from 3 to 4 years to 20 years if that is the case. I think it is unfair. There aren't any jobs out there at the present time. I was fortunate during the Korean war, there were plenty of jobs, I came out and walked into a good job. A lot of these boys are escaping the minimum wage jobs, coming from the streets of New York, Chicago, and so forth, to learn this trade, saying after 3 or 4 years, I could get out of the service, raise a family and so forth.

What we are telling them now is, OK, you did come in and you did learn a trade; we don't want you to go now. That couple of weeks of unemployment that he is going to collect, it isn't the greatest amount of money in the world. He cannot survive on unemployment checks because he has to go out and find a job. So I think it is very unfair what we are doing to the veteran today.

Chairman FORD. I certainly am in total agreement with you. I think our hands might be tied at the present time, however, because of budget constraints. I am not certain what we can do at the present time, to rescind some of the actions that were taken earlier in the Congress in the budget reconciliation bill.

At this time the Chair will recognize Mr. Anthony.

Mr. ANTHONY. I have no questions, Mr. Chairman.

Chairman FORD. Mr. Bafalis?

Mr. BAFALIS. I do not have any questions.

Chairman FORD. Mr. Moore?

Mr. MOORE. No questions.

Chairman FORD. Again, let me thank you very much for appearing before the committee, you and your staff person.

Mr. PATERO. Thank you for giving me the opportunity.

Chairman FORD. Mr. Tauke of Iowa, a Member of the House, is our next witness. We welcome you before the subcommittee and thank you for taking the time out of your schedule.

STATEMENT OF HON. THOMAS J. TAUKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. TAUKE. Thank you, Mr. Chairman and members of the committee.

If it meets the approval of the chairman, I would like to submit my statement for the record and summarize my remarks.

Chairman **Ford**. It will be made a part of the record.

Mr. **Tauke**. Mr. Chairman, I think you and the other members of the committee are all aware of the problem. Through the reconciliation legislation we passed a provision which would basically prohibit members of the armed services from receiving unemployment compensation when they leave the military. I think that this is an unfair approach for two basic reasons: First of all, the individual leaving the military has already served his or her country. This person should not be denied unemployment compensation benefits for choosing not to reenlist any more than any other civilian should be forced to enlist in the military before being eligible for unemployment compensation benefits.

Second, the decision not to reenlist in the service is not comparable, in my judgment, to a decision to leave private-sector employment. Military service is designed to be a temporary career for most men and women. We do not expect to have nor do we want to have a military composed solely of career personnel. A civilian-dominated military is a cherished tradition and important policy of our Nation. I think that you are well aware of the many proposals that have been offered to attempt to correct this problem.

Let me just mention briefly the provisions of the bill which I have introduced.

First of all, to fall within the scope of this bill, military personnel must be in the U.S. Armed Services for 730 days continuously. This is equal to the minimum one term of duty. Unemployment compensation would not be available for military personnel for a fixed 5-week period after being discharged. This allows time for adjustment and recognizes the availability of severance pay and discharge benefits.

Third, unemployment compensation benefits for military personnel would be paid for a maximum of 13 weeks; the weekly benefit amount, or 13 weeks, which is one-half the period for unemployment compensation for civilian workers.

In summary, I think this legislation represents a good compromise between what was on the books prior to the reconciliation legislation passing and what is now on the books with the passage of that legislation.

[The prepared statement follows:]

Statement of Hon. Thomas J. Tauke, a Representative in Congress From the State of Iowa

Mr. Chairman and Members of the Committee: I appreciate the opportunity to make this statement on an issue that is of great importance to the men and women who served our nation in the Armed Forces, namely the need for correcting an inequity created in the Omnibus Reconciliation Act of 1981.

Under the reconciliation provisions, persons leaving the military service under conditions other than a dishonorable discharge are no longer eligible for unemployment compensation. While at first glance, it may appear that these individuals voluntarily left their jobs and should be treated the same as anyone leaving a job in the private sector, it occurs to me that there are several problems with this approach.

One, the individual leaving the military has already served his/her country. This person should not be denied unemployment compensation benefits for choosing not to reenlist any more than a civilian should be forced to enlist in the military before being eligible for unemployment compensation benefits.

Two, the decision not to reenlist in the service is not comparable to a decision to leave private sector employment. Military service is designed to be a temporary career for most men and women. We do not expect to have, nor do we want to have, a military composed solely of career personnel. A civilian-dominated military is a cherished tradition and an important policy of our nation.

It occurs to me that we have definitely created an inequity through a technicality in the law. Interpretation of the present reconciliation provisions provides unemployment compensation for those military personnel who have been discharged favorably but have not been eligible for reenlistment. During Fiscal Year 1980, 65,000 military personnel were separated from the armed services. Of those 65,000, 12,000 were ineligible for reenlistment. As long as these persons meet the unemployment compensation requirements within their states, they are eligible to apply for and receive unemployment compensation. It seems to me that we are punishing the other 81.54 percent of those separated from the service by not allowing the same privilege.

It is interesting to note that many persons leaving a civilian job are not treated as severely as our military personnel. Eleven states and two territories provide unemployment compensation benefits in a variety of ways. The exclusion period is either for a fixed number of weeks or a variable amount of time but not for the total duration of the unemployment. I believe that this clearly indicates that some form of compensation must be provided for our ex-servicemen.

It is for these reasons that I have introduced H.R. 4686. I believe that this measure basically reflects the intent of the original House reconciliation language relating to the unemployment compensation benefits program for ex-servicemen. The provisions of the bill are these:

(1) To fall within the scope of this bill, military personnel must be in the United States Armed Services for 730 days continuously. This is equal to the minimum one term of duty.

(2) Unemployment compensation benefits would not be available for military personnel for a fixed 5-week period after being discharged. This allows time for adjustment and recognizes the availability of severance pay and discharge benefits.

(3) Unemployment compensation benefits for military personnel would be paid for a maximum of 13 times the weekly benefit amount or 13 weeks, which is one half of the period for unemployment compensation for civilian workers.

Several of my colleagues have introduced legislation addressing this issue. One has called for repealing the whole provision and reinstating unemployment compensation benefits for the full 26 weeks for all ex-military personnel. Another calls for measures identical to mine—an alternative compromise approach that I believe will save us money from the previous system and also solve the problem of the inequity in the present law.

I, and 14 of our colleagues, firmly believe that the military personnel of our nation deserve access to unemployment compensation benefits. Through H.R. 4686, my bill, we can correct the inequity inadvertently created in the reconciliation legislation.

Chairman **Ford**. Thank you for your presentation before the subcommittee.

The Chair at this time will recognize Mr. Anthony.

Mr. **Anthony**. Thank you, Mr. Chairman.

Is it your position, Mr. Tauke, that you just think that that particular section in the Budget Reconciliation Act should be stricken and go back to previous law, or do you have some middle ground?

Mr. **Tauke**. If you look at the second page of my testimony, I outline the three provisions of the law which I think should be passed. It basically is the middle ground between the two positions that we have had before and after reconciliation. It would save substantial amounts of money from what we had prior to reconciliation.

Basically it recognizes servicemen and women have 5 weeks of severance pay and other things during which time they would not receive unemployment compensation, and then the maximum amount of time during which they would be able to receive unemployment compensation would be 13 weeks.

Mr. **Anthony**. Is it part of your belief that sometimes when the Congress itself acts through legislation like the budget reconciliation process that sometimes we incorporate in the mass some small provisions that, when looked at with a fine light, we may want to take a different position on?

Mr. **Tauke**. Not even just the small ones; there are often major ones that we may want to take another look at, but this is certainly one of those that I think most Members of the House were unaware of at the time it passed.

Of course the House initially took a position different from the position that was finally part of the reconciliation package and the language passed by the House is remarkably close to the language that I am offering in this legislation.

Mr. **Anthony**. What you are actually proposing is just some fine tuning to the Budget Reconciliation Act and hopefully trying to bring a little fairness and equity to some of those areas——

Mr. **Tauke**. I am for fairness and equity.

Mr. **Anthony**. That we thought were treated a little too harshly?

Mr. **Tauke**. That is correct.

Mr. **Anthony**. I commend you for some of the facts and figures that you put in your testimony. It makes it a little bit more understandable in determining the breadth and depth of the problem.

I welcome you before the subcommittee.

Mr. **Tauke**. Thank you.

Chairman **Ford**. Mr. Moore?

Mr. **Moore**. No questions.

Chairman **Ford**. Mr. Tauke, basically what you set forth here is what was in the House version of the budget reconciliation bill, is that correct?

Mr. **Tauke**. Yes.

Chairman **Ford**. The House receded in conference on the issue because the Senate and administration wanted to take it out.

Basically, what you are proposing would cost us about $100 million I understand from staff.

Mr. **Tauke**. That is correct.

Chairman **Ford**. If we adopt the proposal, the Chair must point out we may have to offset it with savings elsewhere in programs within our jurisdiction.

Mr. **Tauke**. I understand that problem. I think, even recognizing that problem however, the basic equity and fairness, as well as the important principle that we have that we don't have a full-time military but a civilian military, I think those principles are well worth the relatively small amounts of money in terms of the total budget that we are talking about.

Chairman **Ford**. Thank you.

Again we would like to thank you for appearing before the committee.

Mr. **Tauke**. Thank you, Mr. Chairman.

Chairman **Ford**. Thank you.

Congressman Steve Gunderson is our next witness.

The Chair would like to thank you for taking time out from your schedule to appear before the subcommittee. We welcome you.

STATEMENT OF HON. STEVE GUNDERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. **Gunderson**. I appreciate that, Mr. Chairman.

I have a fairly brief statement but in the interest of time I will ask that you accept the whole thing as part of the record.

Chairman **Ford**. It will be made a part of the record.

Mr. **Gunderson**. I appreciate this opportunity to appear before you and address the problem of unemployment benefits for teacher interns, which has become certainly not a major social issue in our State, but certainly a number of us are concerned about the effect it might have in the future.

In my State of Wisconsin, the teacher preparation institutions have formed a consortium called the Wisconsin Improvement Program dedicated to the improvement of teacher education. The program includes 18 colleges—12 State, 6 private—and is headquartered on the UW-Madison campus.

Education students enrolled in member schools have the opportunity to apply for a paid teacher internship in order to meet the State practical experience requirement needed for a teacher's license in Wisconsin.

Founded in 1959, the program provides benefits to the student as well as the participating school district. Benefits to the student include a $2,000 stipend paid to the intern by the school district, class experience, a chance to work with career teachers and a chance to participate in university-sponsored inservice programs.

Advantages to the school district include the introduction of new instructional methods to the classroom and, in some cases, retention of the intern as a full-time teacher once the student has finished the program. The participation of Wisconsin's student teachers in this program has greatly enhanced the quality of education in my State.

Strong support and participation on the part of local school districts is a must for the program to continue. However, a quirk in the Internal Revenue Code has recently led school districts to drop out of the program. These defections compelled me to introduce H.R. 3253.

The problem arises in section 3306 (3)(10)(C) of the Internal Revenue Code of 1954, as amended in 1977. As currently interpreted, the section provides unemployment compensation to interns who have finished their term with a local school district. The local district is then responsible for funding that compensation.

At a time when government at all levels is strapped for funding, many local districts choose not to join the intern program rather than risk the possibility of paying unemployment compensation to these students. Only a few students have applied for compensation. Yet the number of localities having dropped out of the program in response to these applications for UC is alarming. In 27 cases in Wisconsin where students have applied for UC following their intership program, 13 of those participating communities have withdrawn from the program.

This is a loss felt not only financially by the school districts, but one that will also be borne by future teachers and their students, who will have missed valuable intern experience due to a lack of sponsoring communities. It is true that many students will with-draw their applications when they learn the school district is paying for the UC, rather than the State or Federal Government. However, this is not something every school district can count on.

Until November of 1977, school systems accepted teacher interns and paid them the set stipend without risking the possibility of paying UC benefits. The State decided to invoke that section of the statute which excluded students carrying at least a half-time schedule—Wisconsin statutes 108.02(5)(L). The 1977 amendments excluded governmental units. The State Job Service officers had no alternative but to shift consideration of the teacher intern program to the work-study section of the statute—Wisconsin statute 108.2(5)(j)(1), which parallels section 3306(C)(10)(C) of the Internal Revenue Code.

Interns who were age 22 and older were found eligible for unemployment compensation benefits within the interpretation of this statute. Well over 90 percent of the interns placed are age 22 or older since they must be seniors, and they often are in their 5th or 6th year of college. Some take a year or two off to work prior to finishing.

Interestingly enough, neither the Labor Department nor the Internal Revenue Service can explain the existence or purpose of this clause.

In recognition of the disruptions, this quirk in the code has caused the intern program I introduced, H.R. 3253, to amend section 3306(c)(10(C) of the Internal Revenue Code by striking "under age 22" from the work-study portion of the unemployment compensation statute.

Elimination of the clause should remove this obstacle to participation in the internship program by local communities and insure the availability of internship programs to future generations of students.

In closing, I would like to thank the committee for this opportunity to express my concern in regard to a problem, perhaps not very serious but with the potential to seriously undermine this valuable education program.

I firmly believe that education is our country's best investment in the future, and any program demonstrating the kind of positive results the intern program does deserves our support.

Thank you.

Chairman **Ford**. Thank you very much.

Mr. Anthony?

Mr. **Anthony**. I would like to commend my House colleague for introducing this particular piece of legislation. I have been a strong believer in intern programs of all kinds. I think they are the best way that we can show our youth what the realities of working in the real world is all about.

If there is an inequity in the tax code creating problems in Wisconsin, I want you to know that you will at least have the support of one member of this subcommittee to try to take that inequity out.

Mr. **Gunderson**. I appreciate the gentleman's comments.

Chairman **Ford**. Mr. Moore?

Mr. **Moore**. No questions.

Chairman **Ford**. Again, on behalf of the subcommittee, I would like to thank you for appearing and thank you for your testimony.

Mr. **Gunderson**. Thank you.

Chairman **Ford**. The Chair will recognize, representing the Interstate Conference of Employment Security Agencies, Mr. Robert J. Bible, commissioner for the Tennessee Department of Employment Security, accompanied by Mr. Fred E. Barrett, administrator of the Montana Employment Security Division.

Mr. Bible, as chairperson, I would like to personally welcome you to the subcommittee as a citizen of my home State, and also welcome you as a former colleague in the State House of Representatives.

You may proceed.

STATEMENTS OF ROBERT J. BIBLE, COMMISSIONER, TENNESSEE DEPARTMENT OF EMPLOYMENT SECURITY, AND FRED E. BARRETT, ADMINISTRATOR, MONTANA EMPLOYMENT SECURITY DIVISION, BOTH ON BEHALF OF THE INTERSTATE CONFERENCE OF EMPLOYMENT SECURITY AGENCIES, INC.

Mr. **Bible**. Thank you, Chairman Ford and members of the committee. This is a unique priviledge and we want to thank you for the opportunity to express our views.

I am Robert Bible, commissioner of the Tennessee Department of Employment Security and a member of the board of directors of the Interstate Conference of Employment Security Agencies, Inc.

Accompanying me is Fred E. Barrett, administrator of the Montana Employment Security Division. We come before you today representing the Interstate Conference of Employment Security Agencies, Inc., the national association of administrators of State unemployment compensation laws and public employment offices. We appreciate this opportunity to express our views concerning a variety of unemployment insurance matters.

I will address the question of the Reed Act and unemployment compensation for ex-military personnel and will ask Mr. Barrett to handle the other unemployment insurance matters before you today.

Because of the limited time and because our written comments will be included in your official record, I will summarize my remarks in order to stay within the 3-minute limit.

We are in favor of the extension of the expiration date of the Reed Act. It provides a revolving account to the individual States which allows a purchase or construction of real property which reduces the inflationary impact of rental costs. It has no effect on Federal budget totals. As an example of how it can help individual States, I would like to briefly mention how it has been used in Tennessee. In 1958, unemployment insurance offices were built in Memphis, Jackson, and Nashville, Tenn. Though we have never had more than $1.9 million as our share of the Reed Act money in Tennessee, because of the amortization process we have been able to spend up to $2,266,000 in the construction of 22 buildings in the State. Eleven of those buildings have been fully amortized, which has made funds available for the construction of 13 additions to these 22 buildings.

In Tennessee we can definitely say, and I think this is true of all the States that have taken advantage of the Reed Act, it has been cost-efficient in our operations. The current budget constraints make cost-effective program management more important this year than ever.

So we urge you to support Senate bill 1641 or similar legislation which will preserve this important management tool during a time when State employment security agencies are working to provide the highest possible quality of service to your constituents.

The second issue that I want to address is unemployment compensation for ex-military personnel.

Our perspective on this issue is defined by our role as administrators of the unemployment compensation program. We view the issue as a question of how one group of workers—military personnel—is treated for unemployment benefit purposes as compared with other workers. In this context, I would like to explain why we believe that the current law treats former military personnel unfairly.

All wages that a civilian worker earns are credited to him for purposes of qualifying for unemployment benefits. He may have any number of employers during the 1-year period on which his claim for benefits is based. He may leave a job voluntarily in order to accept other employment. If he becomes unemployed from the subsequent employment, his wages from both jobs would be used to determine whether he had sufficient wages to qualify for UI benefits. Former military personnel who obtain other employment after leaving the military and are separated from that subsequent employment are not permitted to use wages earned in the military along with their civilian wages in order to meet qualifying requirements of UI benefits. We find this cancellation of wage credits objectionable.

Further, in determining eligibility for benefits a civilian worker has an opportunity to establish that he had good cause for voluntarily leaving employment. If such good cause is established, he is eligible to receive benefits. The current law makes no distinction among the various reasons that one might voluntarily leave the military. It seems that there probably are reasons for leaving the military which would be considered good cause, just as there are for leaving civilian employment.

We realize that military service is not totally analogous to civilian employment. We are also sympathetic with concerns about potential abuses under the former provisions. However, we feel that the current law is unduly harsh, and would urge modifications which treat former military personnel more equitably.

Mr. **Barrett**. Mr. Chairman and members of the committee, as Mr. Bible said, my name is Fred Barrett. I likewise thank you for our opportunity to appear.

As a general policy, the interstate conference opposes the exclusion of categories of workers from coverage under the Federal Unemployment Tax Act. This policy is based on the view that all workers who are subject to spells of involuntary unemployment should have the protection of unemployment benefits. We do recognize, however, that good arguments can be made for exempting certain workers. I would like to discuss each proposed exclusion individually.

Alien farmworkers: Currently, agricultural services performed by aliens admitted to this country for temporary employment are excluded from coverage. These workers may be admitted only if no U.S. workers are available and must return to their own country when they become unemployed. Therefore, they are not eligible for unemployment benefits in any State. The only country with which the United States has a reciprocal agreement concerning unemployment benefits is Canada. Those favoring exclusion argue that coverage of these workers provides them no protection since they are not able to claim benefits when they become unemployed.

Those favoring coverage argue that excluding these workers' wages from employment taxes gives their employer a competitive advantage over employers who hire American workers and creates an incentive for employers to use foreign rather than domestic labor.

It should be pointed out, however, that employers of alien farm workers bear additional costs, such as transportation, which offsets, to some extent, the savings from employment tax exclusions. While our basic policy opposes the exclusion of categories of workers, we recognize in this particular situation that the issue is more complex than simply one of FUTA coverage.

Regarding student interns, again our membership has not taken a position on this specific issue. Our general position, to repeat, opposes the exclusion from coverage of any category of workers.

We understand from the statements made earlier that certain educational institutions are proposing this exclusion. We, like others testifying today, do not understand the 22-year age limit. We find no validity in having a particular age limit. We would point out, though, that excluding student interns creates a certain inequity. Employers who employ students that are not connected with such educational programs, must pay unemployment taxes on these student workers' wages.

Students who are earning wages, even though the work may be part of an academic program probably should receive the same protection as other workers.

Regarding the exclusion of certain fishermen, this exclusion does not preclude States from continuing to cover these fishermen under State unemployment laws. As previous witnesses stated, it appears unfair to us to allow certain employers in this industry, and their employees to participate in the unemployment insurance program while those employers are not required to share in the cost of administering the system.

With regard to the deduction of pensions from unemployment compensation, I recall that it was the bill developed in this committee, enacted in 1980, which replaced the previous provision requiring deduction of all pensions from unemployment benefits.

We find the current law, which does allow some State flexibility, to be far more equitable than the provision it replaced. The position of the conference, however, is opposition to all Federal benefit standards. Therefore we urge you to repeal this Federal standard regarding the deduction of pensions from unemployment benefits and to allow the States to tailor the relationship of pensions and unemployment insurance benefits to meet the individual State needs.

In a rapid succession, those are our positions on the several measures before you. We would be glad to have the opportunity to answer any questions.

[The prepared statement follows:]

STATEMENT OF ROBERT J. BIBLE, COMMISSIONER, TENNESSEE DEPARTMENT OF EMPLOYMENT SECURITY, AND FRED E. BARRETT, ADMINISTRATOR, MONTANA EMPLOYMENT SECURITY DIVISION, REPRESENTING THE INTERSTATE CONFERENCE OF EMPLOYMENT SECURITY AGENCIES, INC.

Mr. Chairman and Subcommittee members, I am Robert J. Bible, Commissioner of the Tennessee Department of Employment Security and a member of the Board of Directors of the Interstate Conference of Employment Security Agencies, Inc. Accompanying me is Fred E. Barrett, Administrator of the Montana Employment Security Division. We come before you today representing the Interstate Conference of Employment Security Agencies, Inc., the national association of administrators of state unemployment compensation laws and public employment offices. We appreciate this opportunity to express our views concerning a variety of unemployment insurance matters.

REED ACT

The first of several issues I would like to address today is extending the expiration date of existing legislation which provides State Employment Security Agencies with the capability to exercise cost saving measures in their respective states. This legislation, Section 903(C)(2) of the Social Security Act, is commonly referred to as the Reed Act. It allows states to use certain monies for administrative employment security purposes on a revolving basis. Many states have used these funds to purchase or construct administrative offices. This practice reduces overhead costs in the long term by eliminating ongoing and ever increasing rental costs.

Before going further, I would like to briefly describe this legislation and how it works. The Reed Act provisions were added to the Social Security Act in 1954. Those statutes provide for the transfer of federal unemployment tax monies to the individual state trust fund accounts when all federal accounts have reached their stautory limits. This has occurred only three times: in 1956, 1957 and 1958. A total of $138 million was distributed in those 3 years. Each state's share was determined by the proportion that it's covered employment bore to the national total. Reed Act funds may be used by the state either to pay unemployment benefits or with the specific approval of the state legislature for administrative expenses of the states' employment security program. However, the use of Reed Act funds for administrative purposes is currently limited to 25 years from the date of distribution. The original limit was 5 years; however, Section 903(C) has been amended periodically to extend this time limit. Until legislation is passed to extend the time limit again, funds credited to state Reed Act accounts in 1956 will no longer be available for administrative purposes. It should be pointed out that legislation extending the Reed Act would have no effect on federal budget totals. Whether the funds are available only for paying benefits or are also available for administrative purposes, they remain part of the state trust fund accounts.

You might wonder why states have not depleted all Reed Act funds over a 25-year period. Actually, many states with Reed Act funds available have used those monies several times. When the funds are used for construction or real estate purchases, states may amortize the costs over a period of years using administrative grants funds which are redeposited in the Reed Act account. This, in fact, creates a revolving fund which can be used to reduce rental costs on an on-going basis.

A study of employment security administrative financing done for the National Commission on Unemployment Compensation by MACRO Systems, Inc., found that in 1977, states spent $11.5 million toward building purchases and amortization of the Reed account. Rental cost for the same space would have been $35.4 million. This $24 million potential annual savings cannot be attributed entirely to use of Reed Act funds. but is an indicator of the financial advantages in giving states the flexibility to purchase administrative office buildings.

Legislation recently introduced in the Senate, S. 1641, would extend for 10 years the period during which Reed Act funds may be used for administrative purposes. Another provision of this legislation which we also support, would allow states that used Reed Act funds to pay benefits, as a condition of federal loans, to restore those funds after repaying all borrowing. Before approving a loan, the federal government requires that a state deplete its own trust fund reserves, including any Reed Act monies. This legislation would simply allow states to restore Reed Act funds to the pre-borrowing level when loans are no longer outstanding.

Current budget constraints make cost-effective program management more important than ever. We urge you to support S. 1641 or similar legislation which will preserve this important management tool during a time when state employment security agencies are working to provide the highest possible quality of service to employers and unemployed workers with reduced resources.

UNEMPLOYMENT COMPENSATION FOR EX-MILITARY PERSONNEL

The transition of the military from staffing primarily by conscription to staffing by volunteers has created issues concerning the appropriate conditions under which unemployment benefits should be paid on the basis of military service. A little more than a year ago the minimum amount of service required to qualify for benefits under the UCX program was lengthened from 90 days to 1 year. Then, the Omnibus Reconciliation Act of 1981 denied benefits to those who had the opportunity to remain in the military but who chose not to do so.

Our perspective on this issue is defined by our role as administrators of the unemployment compensation program. We view the issue as a question of how one group of workers—military personnel—is treated for unemployment benefit purposes as compared with other workers. In this context, I would like to explain why we believe that the current law treats former military personnel unfairly.

All wages that a civilian worker earns are credited to him for purposes of qualifying for unemployment benefits. He may have any number of employers during the 1-year period on which his claim for benefits is based. He may leave a job voluntarily in order to accept other employment. If he becomes unemployed from the subsequent employment, his wages from both jobs would be used to determine whether he had sufficient wages to qualify for UI benefits. Former military personnel who obtain other employment after leaving the military and are separated from that subsequent employment are not permitted to use wages earned in the military along with their civilian wages in order to meet qualifying requirements for UI benefits. We find this cancellation of wage credits objectionable.

Further, in determining eligibility for benefits a civilian worker has an opportunity to establish that he had good cause for voluntarily leaving employment. If such good cause is established, he is eligible to receive benefits. The current law makes no distinction among the various reasons that one might voluntarily leave the military. It seems that there probably are reasons for leaving the military which would be considered good cause, just as there are for leaving civilian employment.

We realize that military service is not totally analogous to civilian employment. We are also sympathetic with concerns about potential abuses under the former provisions. However, we feel that the current law is unduly harsh, and would urge modifications which treat former military personnel more equitably.

FUTA EXCLUSIONS

As a general policy, ICESA opposes the exclusion of categories of workers from coverage under the Federal Unemployment Tax Act. This policy is based on the view that all workers who are subject to spells of involuntary unemployment should have the protection of unemployment benefits. We do recognize, however, that good arguments can be made for exempting certain workers. I would like to discuss each proposed exclusion individually.

Alien farmworkers

Currently, agricultural services performed by aliens admitted to this country for temporary employment are excluded from coverage. These workers may be admitted only if no U.S. workers are available and must return to their own country when they become unemployed. Therefore, they are not eligible for unemployment benefits in any state. The only country with which the United States has a reciprocal agreement concerning unemployment benefits is Canada. Those favoring exclusion argue that coverage of these workers provides them no protection since they are not able to claim benefits when they become unemployed. Those favoring coverage argue that excluding these workers' wages from employment taxes gives their employer a competitive advantage over employers who hire American workers and creates an incentive for employers to use foreign rather than domestic labor. It should be pointed out, however, that employers of alien farmworkers bear additional costs, such as transportation, which offsets, to some extent, the savings from employment tax exclusion. While our basic policy opposes the exclusion of categories of workers, we recognize in this particular situation that the issue is more complex than simply one of FUTA coverage.

Student interns

I understand that the matter before the Subcommittee is whether the exclusion of wages paid to student interns under the age of 22 should be broadened to student interns of any age. We have not been able to determine any basis for the 22-years age limit. Perhaps the assumption was that most students complete their schooling by age 22. While our membership has not specifically considered this particular coverage issue, our general policy concerning coverage indicates opposition to exclusions of this sort.

We understand that educational institutions which alternate work experience with academic courses are concerned that employers might be reluctant to participate in such programs if they were liable for unemployment benefit charges based on student employment. However, other employers who hire students, not connected with such programs, must pay unemployment taxes on those workers' wages. Students who are earning wages, even though the work may be part of an academic program should receive the same protection as other workers.

Fishermen

The Economic Recovery Act of 1981 provided a 1-year exclusion from FUTA coverage of fishermen who work on boats with crews numbering fewer than 10 and who receive a share of the catch or the proceeds from the sale of the catch in payment for their services. This exclusion does not preclude states from continuing to cover these fishermen for unemployment insurance purposes under state law. Even though excluded from FUTA, these employers could still provide unemployment protection for their workers under state law but make no contribution toward the administration of the system or toward the federal share of any extended benefits paid. Due to the nature of fishing employment, the industry is a heavy user of the system. It appears to be unfair to other employers to allow this industry to participate in the system without paying a share of the costs of running it. It also seems unfair to workers in the industry who run a substantial risk of involuntary unemployment to provide a potential incentive for removal of coverage at the state level.

DEDUCTIONS OF PENSIONS FROM UNEMPLOYMENT COMPENSATION

Until recently, each state was responsible for establishing its own law regarding the relationship of UI and retirement benefits. This state law could reflect the economic conditions, social philosophy, and labor market configuration of each state. At that time more than two-thirds of the states had provisions in their state laws regarding the receipt of pensions relative to UI benefits. The majority deducted when pensions were received from a base period employer. Some deducted one-half if the employee matched his employer's contributions. Others treated the pension as earnings, and as such disregarded an established amount before deduction from UI benefits was made. Clearly in the states' view, the various conditions under which one might receive a pension and also qualify for UI benefits, deserves different treatment.

In April 1980, a federal provision requiring the deduction of all pensions from unemployment benefits took effect. In September 1980, a modification of that requirement, developed by this Subcommittee, was enacted. We continue to believe that states should be able to establish under state law the relationship of unemployment benefits and any retirement pay. However, we find the current law, which allows some state flexibility, to be far more equitable than the provision it replaced.

The current provision requires at a minimum, the deduction of a pension if a base period employer contributed to it and allows disregard of a portion of the pension if the employee contributed. Under this provision, Social Security recipients find that those benefits are always deductible, since almost any base period employer pays Social Security taxes. Those who work while drawing Social Security benefits are those most likely to need more than the amount provided by Social Security benefits in order to finance the basic necessities of life. The reduction of UI benefits by a portion of the Social Security amount lowers the proportion of that person's lost wages which are replaced by UI benefits. There are other arguments which can be made concerning when it is appropriate to deduct retirement pay from unemployment benefits. For this reason we believe that these judgments can be made best at the state level.

We urge you to repeal this federal standard regarding the deduction of pensions from unemployment benefits and to allow the states to tailor the relationship of pensions and UI benefits to meet individual state needs.

Thank you for this opportunity to discuss these unemployment insurance issues with you. We will be happy to answer any questions you might have.

Chairman FORD. Mr. Anthony?

Mr. ANTHONY. Thank you very much.

I was curious, on page 6 you talk about your student interns. I know your basic policy is not to support the exclusion of any worker, but did you hear Mr. Gunderson's testimony about the problems that they run into in the State of Wisconsin?

Mr. BARRETT. Yes, I did.

Mr. ANTHONY. I wonder whether your association would be willing to have some trade-off or compromise between your basic policy of not wanting to have exclusion versus an on-going program that may be beneficial in nature, but also is having a dropout rate because of the liability exposure of the unemployment benefits.

Is your policy set to the extent that you would oppose or are you willing to look at it on a case-by-case basis, and if there are some extenuating circumstances, be willing to support some changes?

Mr. BARRETT. Thank you. As I indicated, we have, as a conference, not taken a specific position on this issue. It had not been raised to our total membership.

I would say, speaking for the way we adopt policy positions, that we certainly would be prepared to look at this specific or any other specific issue and try to adopt a general stance representing the majority of States in our conference.

Mr. ANTHONY. I want to compliment you on your answer. I think that is a reasonable approach to it. Unfortunately, too many people come before the various committees of the Congress with their feet locked or set in concrete and it makes it very difficult to work with them.

But it appears to me without having studied it more in detail, I think you could make a classic difference between one employee who walks away from one employer to another and yet can go back and add those previous benefits to get the total benefits, whereas if you are still in school, because you are pursuing an education, trying to make a decision on what you want to do in life, you cannot.

I notice also you do claim some distinction on a previous page on alien farm workers, you do recognize there are other policy decisions that are involved in it. So to that extent I also want to compliment you and yield back the balance of my time.

Chairman FORD. Mr. Bafalis.

Mr. BAFALIS. I don't have any questions.

Chairman FORD. Thank you. Mr. Bible, going back to the Reed Act. We know over the 3-year period, 1956, 1957, and 1958, some $138 million was distributed to the States. Approximately 33 States still retain Reed Act funds.

Mr. BIBLE. I understand 33 have taken advantage of the Reed Act.

Chairman FORD. Thirty-three States. For our State, Tennessee, how many dollars are involved?

Mr. BIBLE. At the present time, there is approximately $400,000 or $500,000, no more than $800,000, at the most. We do have proposals going before our legislature this year which will utilize a big portion of that money.

Chairman FORD. The State of Iowa, Senator Grassley testified, has already obligated some $750,000 under a purchase-option agreement to buy a building for the Iowa Job Service. Out of the 30-some States that are now utilizing the Reed Act funds, how many do you think have already been obligated some of those dollars?

Mr. BIBLE. Well, I would say most all of them have been obligating some dollars since 1958.

Chairman FORD. I understand that. I am speaking of now.

Out of the 33 States, do you think many have already obligated some of those funds without the extension of the Reed Act?

Mr. BIBLE. They possibly would have passed legislation which would authorize the obligation of available funds. Obviously, they can't authorize funds that they don't have, but they can appropriate available funds with specific language as to its purpose and use.

If I understand it correctly, the 1956 funds are the ones that expired in 1981, the 1957 funds, expire in 1982, 1958 funds will expire in 1983. So it is possible that some States could, even if you do not approve the extension this year, use certain limited funds.

Chairman FORD. We have used Reed Act funds in Tennessee on several different projects according to your testimony before the subcommittee today. Those funds are used for what? Give us some examples of the kind of projects that those dollars have been used for?

Mr. BIBLE. Local unemployment offices. In many counties.

Chairman FORD. Renovation, new facilities, furniture, equipment—give us some examples.

Mr. BIBLE. Two examples that might be of real interest to you is the 1309 Poplar Street in Memphis, and 1295 Poplar Street, that was one of the first we built. As an example of cost effectiveness we own the James Robinson Parkway Building in Nashville, which has 14,000 square feet; rental rates in Nashville now for our other buildings are around $6 and higher. Since this building has been completely amortized, it is saving us approximately $19,000 a year in rental cost. This is a real advantage to the individual States during this time of reduced Federal funds for administration, due to your necessary cutbacks in Federal spending. We might otherwise have to move out of an area where rents are high. By owning our office space we can more easily keep our service available to the community.

Chairman FORD. Other States would be similar to Tennessee in new construction, buying old facilities and renovation, is that right?

Mr. BIBLE. Yes, it would be very similar. As you have noted, you can use it for either purpose, new construction or to purchase buildings.

Mr. BARRETT. I think the situation in Montana would be typical. Montana is also typical of some of the States mentioned earlier that are currently prevented from restoring the Reed Act funds that were used to pay benefits.

During the course of the last 20, 25 years, we in Montana have used almost $700,000. The figures are not large, of course, when you are considering——

Chairman FORD. But you replace those dollars, right?

Mr. **Barrett**. We replaced those as we used them for construction. These were actually dollars used for constructing local offices and our central administrative office.

In 1975, however, our trust fund did go broke.

Chairman **Ford**. What if the State general assembly had already obligated those Reed Act dollars for new construction, renovation or whatever, and the trust fund, unemployment funds were needed to pay unemployment benefits. Would the State at that point be forced to appropriate the necessary funds before they would have been able to borrow from the Federal Government?

Mr. **Barrett**. It is my understanding that the money would not be available to pay benefits..

Chairman **Ford**. Until such time as those dollars are placed back into the trust fund?

Mr. **Barrett**. That is correct.

Chairman **Ford**. Those dollars are exhausted, then they may borrow from the Federal Government?

Mr. **Barrett**. As I understand it, the current provisions will not allow payback if a State used those Reed Act moneys, to pay benefits as we did in Montana. I understand we would have a balance of $92,000 now if we were allowed to restore those moneys. We have paid back our loan from the Federal Government and our trust fund is solvent.

Chairman **Ford**. Before Montana borrowed those dollars from the Federal Government, were any of the Reed Act trust fund dollars obligated for construction, purchasing facilities or renovation?

Mr. **Barrett**. No, sir; we were in a position where we were amortizing previous construction from Reed Act funds and we still are in that position, nearing the end of the amortization period on our central office, having paid back all of the other obligations.

Chairman **Ford**. If the State trust fund had $1 million in Reed Act funds and that amount was already obligated by the general assembly for purchasing a new facility, at the time your trust fund became insolvent, would the State have to first restore $1 million for the payment of benefits before it could borrow from the Federal Government?

Mr. **Barrett**. No, sir; it is my understanding that any obligation incurred prior to having gone broke or becoming insolvent is considered funds spent; that obligation would continue as is. But there would be no money available from that point forward for further obligation out of the Reed Act funds.

Chairman **Ford**. OK; what if the Congress didn't extend the Reed Act, what would happen to these dollars, say, in Tennessee, Montana, or any other State?

Mr. **Bible**. They will go into the unemployment trust fund and can be used for paying benefits.

Chairman **Ford**. They would not be returned back to the Federal Government, those dollars, correct?

Mr. **Bible**. It is a Federal unemployment trust fund, with an accounting system as to how much of that trust fund belongs to each individual State.

Chairman FORD. But if the Congress failed to extend the Reed Act, wouldn't those dollars go directly into the State unemployment trust fund and be used to pay benefits?

Mr. BIBLE. Yes, sir; basically in Tennessee we have exhausted ours, but we continue to build it up by amortization. If you extend the Reed Act, we continue building the Reed Act fund up to a certain level where we can use it again.

If you don't extend it, there is no Reed Act fund, it goes directly back into the unemployment trust fund and will not and cannot be used for administrative purposes, but we will continue to pay back the amortization on the buildings already funded.

Chairman FORD. Thank you very much, Mr. Bible. The committee will try its very best to move in that direction because we know the authority to use the 1956 Reed Act allocation for administration purposes has already expired. So hopefully the committee will be able to move in a manner to report legislation extending the act. The administration testified this morning, as I am sure you heard, that they would support an extension of the Reed Act.

Again, I would like to thank the two of you for appearing before the subcommittee today. If there are no further questions from the subcommittee members, thank you very much.

The subcommittee will now recognize, representing the AFL-CIO, Mr. Bert Seidman, director of the Department of Social Security, and Mr. Robert McGlotten, associate director for the Department of Legislation,

Mr. McGlotten and Mr. Seidman, I want to thank the two of you for coming out and appearing before the subcommittee.

STATEMENT OF BERT SEIDMAN, DIRECTOR, DEPARTMENT OF SOCIAL SECURITY, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, ACCOMPANIED BY ROBERT McGLOTTEN, ASSOCIATE DIRECTOR, DEPARTMENT OF LEGISLATION

Mr. SEIDMAN. Thank you, Mr. Chairman. My name is Bert Seidman, director of the Department of Social Security of the AFL-CIO. With me is Robert McGlotten, who is associate director of the Legislative Department of the AFL-CIO. I will summarize my statement, but I respectfully request that the full statement be included in the record.

Chairman FORD. It will be made a part of the record.

Mr. SEIDMAN. Thank you, Mr. Chairman.

We appreciate the opportunity to present to this subcommittee the views of the AFL-CIO on certain unemployment compensation issues that are of concern to us and we believe the subcommittee. Almost all of these issues involve one form or another of discriminatory denial of coverage to certain groups of workers. These groups of workers include retirees, ex-service members, alien farmworkers, fishermen, and student interns.

The AFL-CIO has long favored universal coverage under unemployment insurance and we have particularly opposed efforts to reduce coverage of unemployment insurance. Therefore we are concerned about singling out groups of workers who are affected by various forms of discrimination which are now in the law.

Turning first to the unemployment compensation offset, of major concern is section 3304(a)(15) of the Internal Revenue Code, which requires States to reduce the amount of unemployment compensation benefits by the amount of retirement benefits received under a plan attributable to a base-period employer.

This provision discriminates against retirees and pensioners who either wish to or must continue working, and does not recognize that retirement in many cases is involuntary.

States may limit the amount of the pension reduction by taking into account the contributions made by workers to their employment plans, but unfortunately this is not a requirement under the law and should at the very least be mandatory. But this is not enough. The AFL–CIO urges outright repeal of the offset which reduces the fairness and efficacy of the Federal-State unemployment compensation system.

UNEMPLOYMENT COMPENSATION FOR EX-SERVICE MEMBERS

Ex-service members who leave the military voluntarily are no longer eligible for unemployment compensation benefits under a provision of the Omnibus Reconciliation Act of 1981. Those who choose not to reenlist now have no protection while they are seeking civilian employment. Decisions on eligibility of ex-service members for unemployment compensation should be left to the States. The AFL–CIO urges repeal of this requirement.

EXTENSION OF THE REED ACT

The Reed Act provides that the excess of Federal unemployment tax receipts over the amount needed for administrative expenses, extended benefits, and loans to the States, be distributed to the individual State accounts in the unemployment trust fund. These surplus funds have provided the States with the flexibility to purchase land and to construct office buildings for their employment security programs. The AFL–CIO favors a permanent extension of the Reed Act.

EXTENSION OF EXCLUSION OF CERTAIN ALIEN FARMWORKERS FROM THE FEDERAL UNEMPLOYMENT TAX ACT

Present law provides an exemption from coverage under FUTA of agricultural work performed by alien workers admitted to the United States for temporary agricultural and logging employment. This exemption has created a competitive disadvantage for U.S. agricultural workers by providing an incentive to hire aliens when thousands of domestic farmworkers are unemployed. Further the exemption deprives the unemployment trust funds of needed revenue at a time when many of these funds are in debt. The AFL–CIO urges that this exclusion be terminated.

EXCLUSION OF CERTAIN FISHERMEN FROM FUTA

The Economic Recovery Act of 1981 introduced a 1-year exclusion from FUTA coverage for work performed by individuals engaged in fishing on boats under certain conditions. Regardless of remunerative arrangements these fishermen are in fact employees and entitled to the same unemployment compensation protections as other workers. We urge this exclusion be allowed to expire.

EXCLUSION OF STUDENT INTERNS OVER AGE 21 FROM FUTA

Full-time students over the age of 21 whose employment is part of a work-study program are excluded from coverage under FUTA. If these students are employed by a covered employer and meet the qualifying requirements for unemployment compensation under State law, they are entitled to unemployment benefits. This discriminatory exclusion should be repealed.

In conclusion, Mr. Chairman, we strongly urge this subcommittee to give full consideration to our recommendations, which we believe will help to restore efficacy and fairness to the unemployment compensation system.

I will be glad to answer any questions you or the members of the subcommittee may have.

[The prepared statement follows:]

STATEMENT OF BERT SEIDMAN, DIRECTOR, DEPARTMENT OF SOCIAL SECURITY, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

We appreciate the opportunity to present to this Subcommittee the views of the AFL–CIO on certain unemployment compensation issues that are of concern to us and the Subcommittee. Our comments focus on the pension offset requirements in federal law, denial of unemployment compensation benefits to servicemembers who fail to reenlist, extension of the exclusion from FUTA of certain alien farm-workers, extension of the Reed Act and exclusion of student interns and certain fishermen from FUTA.

UNEMPLOYMENT COMPENSATION PENSION OFFSET

Of major concern is Section 3304(a)(15) of the Internal Revenue Code which requires states to reduce the amount of unemployment compensation benefits by the amount of retirement benefits received under a plan attributable to a base period employer. This requirement violates the social insurance principles of the unemployment compensation system. The system has as its objective the provision of a partial replacement of lost income to workers who are unemployed through no fault of their own while seeking suitable work commensurate with their skills and experience. Workers are entitled to unemployment compensation benefits as a matter of right based on a statutorily defined qualifying period of work with a covered employer in each state. Workers who meet the qualifying requirements for unemployment compensation are entitled to the full amount of their weekly benefits.

This provision discriminates against retirees and pensioners who either wish to or must continue working. In both cases, these workers accept the risk of job loss and, therefore, are entitled to unemployment compensation benefits. Retirement benefits are also an earned right based on previous employment. To require a pension offset against unemployment compensation benefits is to interject a means test into the unemployment insurance program which is designed to disregard other sources of income and asset position in the determination of benefits.

The means test engendered by this offset is retrogressive and ignores the inadequacy of benefits in most states as well as the small size of many pensions, particularly in the nonunionized sector of the economy. The offset not only violates unemployment insurance principles but also is discriminatory against those who may have received somewhat lower wages, and therefore are entitled to lower benefits in order to obtain better pensions. They should not be penalized by this provision.

Present law provides that this offset provision will apply only to benefits received under a plan attributable to a base period employer but not when the base period employment did not increase or affect eligibility for the pension. Although this restriction could reduce the number of workers who would be impacted by this provision, it does not recognize that retirement, in many cases, is involuntary. Involuntary retirement is often effected by employers for reasons other than age, such as plant closings, plant relocation or layoffs. Workers who are forced to retire under these circumstances should receive the statutorily prescribed benefit amount.

States may limit the amount of the pension reduction by taking into account the contributions made by workers to their retirement plans. Unfortunately this is not a requirement under the law. States can therefore reduce unemployment compensation by the amount of retirement benefits received dollar for dollar even when workers have made contributions toward their pensions. The limitation on the offset based on an individual's contribution should, at the very least, be mandatory. It is unconscionable to offset the amount attributable to workers' contributions to their own pension plans, especially in those cases in which the pension is based solely on those contributions.

Further, social security and railroad retirement benefits are excluded from the provision that exempts pension benefits for which eligibility or amount were not affected by the base period employment. This situation unfairly discriminates against those who rely on these benefits as the major or sole source of retirement income.

In its report to the President and Congress, the National Commission on Unemployment Compensation unanimously recommended the repeal of the pension reduction requirement. The AFL-CIO Executive Council has also urged Congress to repeal this provision. The AFL-CIO testified in 1979 indicating our strong opposition to this provision in the law and in support of legislation to repeal it.

Today, we reiterate our opposition for reasons of equity and principle as this pension offset reduces the fairness and efficacy of the federal-state unemployment system and, we therefore, urge repeal of this requirement.

UNEMPLOYMENT COMPENSATION FOR EX-SERVICEMEMBERS

Until the Omnibus Reconciliation Act of 1981 was enacted, service-members who left the military under conditions other than dishonorable could qualify for unemployment compensation benefits. Now, ex-servicemembers who leave the military voluntarily are no longer eligible. Unemployment compensation for ex-servicemembers is designed to provide weekly benefits to separated members of the armed forces while they search for employment. Benefit eligibility and amount have always been determined by the law of the state in which the claim is first filed.

This limitation significantly reduces the servicemember's freedom of choice in deciding whether or not to re-enlist. Those who choose not to re-enlist now have no protection while they seek attachment to the civilian labor force. During periods of high unemployment and tight labor conditions, these individuals will experience severe hardship while seeking work.

The Federal Advisory Council on Unemployment Insurance, of which I am a member representing the AFL-CIO, unanimously opposed the Administration's proposal to restrict eligibility for ex-servicemembers in this manner and supported the retention of the law which established entitlement under federal law, leaving decisions on eligibility to the states. Military personnel should be treated as equitable as civilian personnel. The new law undermines this equal treatment and should be repealed.

EXTENSION OF THE REED ACT

The Reed Act provides that the excess of federal unemployment tax receipts over the amount needed for administrative expenses, extended benefits and loans to the states be distributed to the individual state accounts in the unemployment trust fund. This law allows the states to use these surplus funds for administrative expenses related to their unemployment compensation program. These funds have provided the states with flexibility to purchase land and to construct office buildings for their employment security programs. This legislation will expire on December 31, 1981 unless it is extended.

The National Commission on Unemployment Compensation recommended that the provisions of the Reed Act be made permanent. The AFL-CIO agrees with the Commission's recommendation and favors a permanent extension of the Reed Act to provide the states with needed flexibility in administering their unemployment compensation programs.

EXTENSION OF EXCLUSION OF CERTAIN ALIEN FARMWORKERS FROM THE FEDERAL UNEMPLOYMENT TAX ACT

Present law provides an exemption from coverage under the Federal Unemployment Tax Act of agricultural work performed by alien workers admitted to the United States for temporary agricultural and logging employment. However, the number of alien workers must be counted to determine if an employer meets the FUTA requirement of 10 workers in 20 weeks or $20,000 quarterly payroll.

This exemption has created a competitive disadvantage for U.S. agricultural workers by providing an incentive to hire aliens when thousands of domestic farmworkers are unemployed. Not only are employers able to avoid the FUTA tax but also they avoid the social security tax on their taxable payrolls simply by switching to alien workers.

The argument offered for continued exemption is that an employer should not be taxed on behalf of workers who will leave the U.S. and thereby not collect unemployment compensation benefits. This argument ignores the "pooled insurance" concept of the unemployment compensation system which provides that the burden of unemployment in one industry will be shared by all employers in that industry. Many employers, therefore, pay much more into the trust funds than will be recovered by their employees. Growers should be expected to do no less than other employers.

In addition, the exemption deprives the unemployment trust funds of needed revenue at a time when many of these funds are in debt. Those employers using foreign agricultural labor are allowed to shirk responsibility for helping to maintain the unemployment compensation system by transferring UI tax payments to employers who hire U.S. workers.

For these reasons, the AFL-CIO urges that the present FUTA exclusion from coverage of agricultural services performed by alien workers be terminated.

EXCLUSION OF CERTAIN FISHERMEN FROM FUTUA

The Economic Recovery Act of 1981 introduced a one-year exclusion from FUTA coverage for work performed by individuals engaged in fishing on boats under certain conditions. This exclusion, which unless extended will expire on December 31, 1981, applies to workers who receive a share of the catch or the proceeds of the catch when working on a boat with a crew of less than 10 workers. Regardless of remunerative arrangements, these fishermen are, in fact, employees and are entitled to the same unemployment compensation protections as other workers. Their employers are no different from other employers and should be subject to the requirements of the Federal Unemployment Tax Act.

We urge that this exclusion be allowed to expire.

EXCLUSION OF STUDENT INTERNS OVER AGE 21 FROM FUTA

Full-time students over the age of 21 whose employment is part of a work-study program are excluded from coverage under FUTA. These students, unlike those who have jobs for which they earn academic credit, are receiving wages for the services they perform. If these students are employed by a covered employer and meet the qualifying requirements for unemployment compensation under state law, they are entitled to unemployment benefits. Their employers should contribute FUTA taxes on their behalf just as they do for their other employees.

Removing the age limitation in this provision does not eliminate its discriminatory effect. This discriminatory exclusion should be repealed as it denies the work-study participants unemployment compensation protection to which they are entitled.

CONCLUSION

We strongly urge this Subcommittee to give full consideration to our recommendations which we believe will help to restore efficacy and fairness to the unemployment compensation system.

Chairman **Ford**. Thank you, Mr. Seidman.

Mr. Anthony.

Mr. **Anthony**. I have no questions.

Chairman **Ford**. Mr. Bafalis.

Mr. **Bafalis**. Just one, not to cover old ground. You cite in your statement, on page 5: "Not only are employers able to avoid the FUTA tax but also they avoid the social security tax on taxable payrolls simply by switching to alien workers." I guess you are not aware of the fact that H-2 workers, as relates to the British West Indies, do pay into the British West Indies social security system for those employees in this country. You may not be aware of that, but that is a fact.

Mr. **Seidman**. They pay into the British West Indies?

Mr. Bafalis. Social security. The inference in your statement is they are avoiding social security taxes. They are not avoiding that cost, they are paying into the social security tax of another country who can then give social security benefits once those people come back to their native land.

Mr. Seidman. I was not aware of that.

Mr. Bafalis. I assumed you were not.

Mr. Seidman. I might say if the social security tax—and I do not know that it is—for British West Indies is lower than it is for the United States, then of course——

Mr. Bafalis. I do not know what that rate is.

Mr. Seidman. There still would be some incentive.

Mr. Bafalis. We can find out what that rate is. I do not know all the countries that are involved either, but I do know there is a requirement to pay a social security tax to those countries of origin for those H-2 workers. That is all.

Chairman **Ford.** I am not clear on that point, Mr. Bafalis.

Mr. Bafalis. What the employer is required to do, at least in Florida as relates to sugarcane employers, when they import under the H-2 program from Jamaica they are required to pay into the Jamaican social security system a certain amount based on that employee's wages while they are in our country working for a Florida sugar grower.

Chairman **Ford.** I was not aware of that.

Mr. Bafalis. Mr. Seidman was not, either. I just wanted to get that into the record. He can check out what I am telling him, but it is a fact.

Mr. Seidman. Of course this is a hearing directed to the question of unemployment insurance, and not social security.

Mr. Bafalis. No, you brought it up in your statement. I want to make sure the record is clear on that.

Mr. Seidman. I recognize that and appreciate it. All I am saying is I do not intend to respond to—other than the extent to which I have already—to what Mr. Bafalis has said, but the point that we are making, which is with respect to the unemployment insurance and not social security, from our point of view is still valid.

They are not required to pay any unemployment insurance tax to these other countries, nor are they required to pay an unemployment insurance tax to the United States.

Mr. Bafalis. I might also point out, Mr. Chairman, if I might, on unemployment compensation insurance, because of State law in Rhode Island, New York, and Maryland, they are required to pay unemployment compensation insurance; and you know in those States, despite that disincentive, the use of H-2 workers has continued to increase over the years.

Chairman **Ford.** If they pay the Federal tax would they be obligated to pay a State tax?

Mr. Bafalis. I do not know. I do not know if one relates to the other. Counsel may be able to answer.

Mr. Bowler. If they are covered under the Federal tax they would be required to pay the State tax as well.

Mr. Bafalis. But if they are required to pay the State tax in the three States I mentioned, they are not required to pay the Federal tax; is that right?

Mr. BOWLER. That is right. States may go beyond the Federal tax requirements, and we do have a number of States that have done that.

Mr. BAFALIS. My point being, the argument is used if you impose this tax on the employers it would therefore make them hire more Americans and less H-2 workers, but in the three States where that additional cost has been applied, just the opposite has been true. As a matter of fact, more H-2 workers have come on board each and every year.

Mr. SEIDMAN. We are perfectly willing to have equal competitive conditions for American workers and the workers from abroad, but we do not think that the conditions ought to be set up that so that even potentially they favor the employment of workers abroad rather than American workers.

Mr. BAFALIS. Without trying to prolong this matter, because I know we have a lot of witnesses, I might respond by saying this. I speak only at this moment of Florida sugarcane growers, because they are in my district. I know what happens and what the problem is down there. We hire offshore laborers because of the fact we cannot find domestic laborers. I am not talking about apple pickers now, or tobacco people in the tobacco fields. I would not cut cane for $200 an hour, and most Americans are not going to cut cane because it is a back-breaking job. Unless you have been brought up in that industry, as has been the case in Jamaica, British West Indies, you are not going to find sufficient people to come in and do that.

What happened is this, because of the adverse-effect rate that must be paid, because of the fact that we have to house and feed those people, American workers who are willing to work in that area find a much higher wage available to them than they would find under the minimum wage. If someone who hires H-2 workers also hires American workers—and all of them do, they do not have an exclusive H-2 workers list, they have American and H-2 workers—those American workers get the same benefits, housing, food, higher wages, transportation to and from their job. So it is my position that if we did not have a H-2 worker program those wages and benefits for those Americans who are willing to cut cane would not be as high.

Chairman FORD. Would not be?

Mr. BAFALIS. Would not be as high, because once you as an employer bring in H-2 workers you must offer to the American worker the same benefits that you offer to the H-2 workers, housing, food, transportation. You would not be required to do that if you were an employer that did not hire H-2 workers, nor would you be required to pay the adverse-effect rate, you would only have to pay the minimum wage.

Chairman FORD. But what are we talking about, Mr. Bafalis, in terms of tax payments if there were no FUTA exclusion for alien farmworkers?

Mr. BAFALIS. They tell me if we do away with the exemption we are talking between $1½ million and $2 million.

Mr. BOWLER. That is correct.

Chairman FORD. That is Federal and State?

Mr. **Bafalis**. This is nationally. That is the figure given to me by staff. You are talking about a minuscule amount of money, but it is not minuscule to the fellow who is marginal, paying these high costs.

Chairman **Ford**. That $1 million to $2½ million, are we just talking about Federal and State, or just Federal?

Mr. **Bowler**. Mr. Chairman, it is my understanding that the Department of Labor's estimate of State and Federal tax.

Mr. **Bafalis**. As a practical matter, Mr. Chairman, it is important when your other costs are high, but if you have to have someone to pick your crops, you are still going to go for those H-2 workers if you cannot find American workers, regardless of the cost. The bottom line is getting those crops picked or harvested. So the argument being used, that if this tax is imposed upon the employer they are not going to hire Americans, is not the case. In the sugar cane industry you cannot find them. Nobody wants to go into those fields and cut cane.

Mr. **Anthony**. Would the gentleman yield?

Chairman **Ford**. Yes.

Mr. **Bafalis**. Yes; certainly.

Mr. **Anthony**. I would like to say also at a time when we just got through debating our farm bill for 1981 and the Congress rejected any type of support system for our cane growers, so that we are going to continue to have pressure on the profitability of that particular farm agricultural economy to the extent we will probably see more of them go out of business. So this is just one additional burden, as I understand the gentleman from Florida, that would be placed on his growers.

Mr. **Bafalis**. I thank the gentleman. He makes a very excellent observation.

Chairman **Ford**. Mr. Seidman.

Mr. **Seidman**. Well, our position simply is that there should be no discrimination. We do not think there should be—if there are employers who want to hire American workers, if American workers are available, there is clearly an inhibition against their doing so, a disincentive for their doing so, we do not know that these circumstances are the same all over the country. They may apply in different circumstances, and we think this form of discrimination should be removed. Apparently Mr. Bafalis does not.

Chairman **Ford**. You are opposed to any extension?

Mr. **Seidman**. We are opposed to the present provision or extending the present provision.

Chairman **Ford**. Thank you very much. Unless there are further questions from members of the subcommittee, thank you for appearing.

The subcommittee will recognize, representing the Farm Labor Executive Committee, S. Steven Karalekas; representing the Florida Fruit and Vegetable Association, George T. Sorn; representing the U.S. Sugar Corp., James Terrill, vice president of personnel; and representing Virginia-Carolina Agricultural Producers Association, R. Hart Hudson.

The Chair will now recognize Mr. Karalekas.

Mr. **Karalekas**. With the permission of the subcommittee, I would like to let Mr. Sorn go first.

Chairman FORD. That would be fine.

STATEMENTS OF GEORGE F. SORN, ASSISTANT GENERAL MANAGER AND MANAGER, LABOR DIVISION, FLORIDA FRUIT AND VEGETABLE ASSOCIATION, AND JAMES TERRILL, VICE PRESIDENT FOR PERSONNEL, U.S. SUGAR CORP.

Mr. SORN. My name is George Sorn, assistant general manager of the Florida Fruit and Vegetable Association, an association of growers who produce a majority of citrus, vegetable, sugarcane, and tropical fruit grown in Florida.

With me is James Terrill, vice president for personnel, U.S. Sugar Corp., a grower and processor of sugarcane in Florida.

Together, we represent the employers of all the H-2 alien farm workers certified for use in Florida agriculture. At present this usage in Florida is confined to the cutting of sugarcane.

Our comments are directed only at your consideration of the extension of the exclusion of certain alien workers from the Federal Unemployment Tax Act [FUTA], which is scheduled to expire on January 1, 1982. (Sec. 3306(c)(1)(B) of the Internal Revenue Code.)

We respectfully urge this committee favorably consider a permanent exclusion from the payment of unemployment insurance taxes on the wages of H-2 workers for the following reasons:

No. 1. A far-reaching and bona fide effort to insure that all workers who can legally work in the United States know about the job and are given the opportunity to work in the job must be made to the satisfaction of the U.S. Department of Labor before the USDL certifies for the use of H-2 workers. American workers and other workers who can legally work in the United States must first be given the opportunity for the job on exactly the same terms as the H-2 workers, except that American workers and other legal workers have full unemployment compensation benefits. The American and other legal domestic workers, therefore, are not disadvantaged by the fact that H-2 workers cannot draw benefits.

I might add that the offer of a job to American workers who can legally work extends beyond the time of first hiring. It extends at least until the 50-percent point of the contract period, and in many cases even beyond that period of time.

No. 2. H-2 workers by the very nature of the H-2 program must be returned to their foreign homes when their USDL certified jobs are completed in the United States. Since the inception of the supplemental nonimmigrant temporary foreign worker program—now known as H-2—in the early forties, the wages of H-2 workers have been exempt from the payment of FUTA taxes. The most compelling reason for the historic exemption is that it is illogical and unreasonable to require an employer to pay a tax for a social program when the employees for which the program is designed can never participate in the benefits of that program. Since, by the very nature of the H-2 program, H-2 workers would not be unemployed in the United States, and must be returned to their country of origin, the H-2 workers cannot draw unemployment benefits.

No. 3. The use of H-2 workers is already more costly to employers than the use of workers who can legally work in the United States. Employers of H-2 workers must guarantee a U.S.

Department of Labor—dictated "adverse effect" minimum wage rate much higher than the Fair Labor Standards Act minimum applicable to virtually all other agricultural and nonagricultural workers—in Florida $4.69 per hour versus Fair Labor Standards Act $3.35 per hour minimum. In order to comply with the U.S. Department of Labor—dictated "criteria" regulations—20 CFR 655.200—the costs—to Florida H-2 employers—in the 1981-82 season will average $622 per worker—not counting the cost of complying to the higher "adverse effect" wage rate—a cost of $148 per worker higher than if the employer had been able to find American workers to do the job.

The difference in cost is even greater in the Northeast, where transportation costs to obtain H-2 workers is higher and the season is much shorter.

For the above reasons, we respectfully request the temporary exemption from the payment of FUTA taxes on the wages of H-2 workers be made permanent.

Mr. **TERRILL**. Mr. Sorn presented our testimony jointly.

STATEMENT OF S. STEVEN KARALEKAS, COUNSEL, FARM LABOR EXECUTIVE COMMITTEE

Mr. **KARALEKAS**. Mr. Chairman, my name is Steven Karalekas. I am an attorney in Washington, D.C., speaking today on behalf of the organization known as the Farm Labor Executive Committee. FLEC, as it has become known, represents 350 applegrowers located in the 6 New England States, and New York, Maryland, Virginia, and West Virginia. The applegrowers have been active participants in the H-2 temporary worker program for approximately the past two decades. Because of the demonstrated shortage of U.S. citizens to harvest their crops, the growers have had to rely on supplementary temporary workers, mostly from Jamaica. A few workers come from Canada.

FLEC supports the position stated by Mr. Sorn, extending the exclusion from the Federal Unemployment Tax Act of employers of temporary foreign workers. The exclusion is currently scheduled to expire on December 31, 1981. Under present law, employers do not have to pay unemployment taxes on aliens admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act. This provision has been a part of Federal law in one form or another for as long as the H-2 program has been in existence. The applegrowers urge the committee to make the exclusion permanent. The unemployment compensation program is completely irrelevant to temporary apple pickers admitted to the United States to work for only 1 to 2 months a year.

The applegrowers feel that the imposition of an unemployment tax would penalize employers who use H-2 workers simply because U.S. citizens are unavailable. I might point out that the determination as to whether or not U.S. citizens are available to do the work is one made by the U.S. Department of Labor, and they have certified the unavailability of U.S. workers for each of the last 20 years. Foreign workers would receive no unemployment benefits since, by definition, if there is no work here, their temporary status is revoked.

The Reagan administration has proposed and the Congress is now considering a plan to admit 50,000 guest workers from Mexico each year for 2 years. The pilot program proposed by President Reagan is designed as a part of a package of initiatives to stem the flow of illegal aliens into this country. In his message to the Congress, the President takes the position that guest workers should not be eligible to receive unemployment compensation or social security benefits. If a guest worker is unable to find employment, or his job ends, he/she would be required to move to another job or return to Mexico. He/she is not going to be able to stay in this country to collect benefits for which an employer has paid taxes. Just as it would be unfair to tax employers of H-2's for unemployment benefits for which the workers are ineligible, so too would it be unfair to impose an unemployment tax on employers of guest workers.

U.S. citizens have declined to accept the growers' offers of employment even though the terms and conditions offered are fully competitive with other agricultural and nonagricultural jobs. The Department of Labor imposes a complex set of costly wage and benefit requirements on H-2 employers, 20 CFR part 655. The regulations require free housing, free transportation, subsidized meals, workmen's compensation, minimum work guarantees, free tools and equipment, and other lesser benefits. The round-trip transportation and subsistence costs from Jamaica to New York State in 1981 averages close to $300 per worker. When added to the other listed benefits, one can plainly see that Jamaican workers without the FUTA tax are more expensive than U.S. citizens covered by the tax. Those who argue that the FUTA exclusion makes H-2 workers cheaper than U.S. workers ignore the facts. Moreover, the argument that the FUTA tax exclusion serves as an incentive for employers to favor foreign workers over domestic workers is also false. The States of Rhode Island, New York, and Maryland impose unemployment taxes on employers of foreign workers, yet the numbers of foreign workers in those States has been increasing in recent years.

U.S. workers are in no way disadvantaged by the current exclusion in the law. As a result of an amendment enacted by Congress in 1979, H-2 workers are counted for the purpose of determining whether an employer is covered under Federal unemployment compensation law. Moreover, since a foreign worker cannot receive an H-2 visa unless the U.S. Government has certified the unavilability of U.S. workers, no prejudice would result.

We are aware of no provision of Federal law which earmarks a tax to fund a particular benefit in favor of a class of persons who are ineligible for the benefit. This is exactly what would happen if Congress eliminates the FUTA exclusion for temporary foreign workers.

For the foregoing reasons, the Farm Labor Executive Committee, on behalf of its members, strongly supports amending the law to provide a permanent exclusion for employers using temporary foreign workers. The cost of employing temporary H-2 foreign workers is considerably higher than the cost of employing U.S. citizens. The fact of the imposition of an additional tax on this expensive process would be onerous and burdensome on the employers of H-2 workers who are unable to find U.S. citizen workers to do the job. The applegrowers of the east coast endorse the provision to amend the law to make the exclusion of FUTA tax permanent.

Thank you for your consideration.

Chairman FORD. Thank you, Mr. Karalekas.

The Chair will now recognize Mr. Hudson.

STATEMENT OF R. HART HUDSON, PRESIDENT, VIRGINIA-CAROLINA AGRICULTURAL PRODUCERS ASSOCIATION, INC.

Mr. HUDSON. Mr. Chairman, my name is R. Hart Hudson. I am a small Virginia tobacco farmer. I am also president of the Virginia-Carolina Agricultural Producers Association. Our association represents approximately 150 tobacco farmers in the southside, Virginia area, and just over the line in North Carolina. The association's farmer members urge Congress to extend permanently the Federal Unemployment Tax Act exclusion for temporary foreign agricultural workers.

Specifically, we ask that section 3306(c)(1)(B) of the Internal Revenue Code be amended to strike the words "before January 1, 1982." This change would make permanent the exclusion of employers from having to pay unemployment taxes on their foreign workers. If Congress allows the current exclusion to expire, it will be an injustice to our farmers and the temporary Mexican workers who plant, cultivate, and harvest our crops.

Our association believes that if Congress is to have any chance of controlling the illegal alien situation, it must consider the problems of those using legal, alien labor.

The farmers in our association have produced tobacco on family-owned farms for the better part of this century. Traditionally, our labor needs have been met by an abundance of local American citizens ready, willing, and able to do the work. During the years following World War II, the local work force began drying up. Our farmers were forced to rely on interstate sources for needed workers.

By 1978, it became apparent that most, if not all, of the interstate workers on our farms were Mexican citizens ineligible to work in the United States. Since our growers were under no obligation to establish their workers' citizenship and since many workers were referred by Government agencies, no inquiries were made.

As a consequence of a raid by officers of the Immgiration and Naturalization Service and the midseason loss of many of our workers, our growers looked for an alternative source of labor. We retained legal counsel to help us to get workers through the H-2 program. I am happy to say that in 1979 our association succeeded in its most costly struggle with the Labor Department. We received approvals for the admission of over 800 temporary Mexican farmworkers.

In 1979, and again in 1980 and 1981, Mexican workers came to Virginia to work on our farms. They did so under the close supervision of the United States and Mexican Governments, the Commonwealth of Virginia, and numerous farmworker rights organizations. At the end of each season, all of the workers returned to Mexico.

The foregoing background leads me to the key point I wish to make to the subcommittee. When our farmers first applied for H-2 workers from Mexico, they were stunned by the costs imposed by the U.S. Department of Labor; namely, the adverse effect wage rate.

Farmers who wished to become a part of the program declined to do so when they learned of the costs. Regrettably, these farmers, like thousands of others across the United States, find it easier and cheaper to use undocumented workers than to get involved in the H-2 program.

Because of these high costs, our association urges the Congress not to add yet another financial burden to the program. If Congress eliminates the exclusion from the Federal unemployment tax for temporary foreign farmworkers, it will do just that. Since H-2 workers are not eligible for unemployment compensation, the Government would be exacting a tax for which no benefit would be paid.

While other farmers in Virginia are required to pay their workers the Federal minimum wage of $3.35 per hour, H-2 farmers must pay $3.81 per hour—14 percent higher. We must offer free housing—they do not. We must pay our workers' round trip transportation costs—they do not. We must provide subsidized meals—they do not. We must engage in a time consuming and expensive national recruitment program—they do not. We must pay high legal and administrative costs of which they are not involved. If you add these costs together, H-2 employers end up paying approximately 75 percent more for their labor than non-H-2 employers.

Any additional cost added to this heavy burden will make it infinitely more difficult to persuade employers to rid themselves of the illegal alien habit and into a legal one.

Congress should not add to the costs, particularly by imposing a tax for which no benefit will ever be paid. It makes no sense and we feel it is wrong.

In conclusion, our association would urge the Congress to make permanent the traditional exclusion from the unemployment tax for temporary agricultural labor.

Thank you for your consideration.

Chairman FORD. Thank you very much. Let me ask you, how long are these workers, Mr. Sorn—how much time do they spend here, say, in the course of a year?

Mr. SORN. In sugarcane you will have a few that will come in in September, and probably go home in March, but the vast bulk of them, approximately——

Chairman FORD. Sugarcane, you say, comes in in September and extends through March, right?

Mr. SORN. Sometime in March; it depends on the crop. But only a couple of hundred come in that early; the vast majority will come in just about this time, the first of November. The cane-cutting sugarcane season is about 20 weeks.

Chairman FORD. What about apples?

Mr. SORN. Mr. Karalekas can address that. Some of the workers that we do use in sugarcane are transferred down from apples. So it would be continuing employment.

Chairman FORD. So it is the same workers?

Mr. SORN. Same workers.

Chairman FORD. What time of year would that be?

Mr. KARALEKAS. The apple season on the east coast begins generally around Labor Day and ends late in October. It varies. The further north you go, like upstate New York, the shorter the season.

Chairman FORD. When would you bring them in?

Mr. KARALEKAS. We would bring them in around Labor Day. The average for the east coast is about 30 picking days. They are picking apples for 30 workdays. That usually covers 5 to 6 weeks. In the Champlain Valley of northern New York, the season is very short; it is about 1 month. You are talking about a very short period of time.

Chairman FORD. So what are we talking about, up to approximately 6 months?

Mr. KARALEKAS. In apples; no, sir.

Chairman FORD. Not in apples. You said around Labor Day they will come in to pick apples and some of the same H-2——

Mr. SORN. Some of them could be here 6 months; yes, sir.

Chairman FORD. Because they go right into the sugarcane?

Mr. SORN. Yes.

Chairman FORD. So we are talking about 6 or 7 months?

Mr. SORN. Of the total numbers, I would say approximately 2,500 would be in that long; the rest would be in much shorter periods.

Chairman FORD. Out of the 18,000 H-2 certifications that we are talking about, 50 percent of them would spend approximately what length of time?

Mr. SORN. Mr. Chairman, we don't have 18,000. There is 8,500 in sugarcane and about 56,000 in apples. But there is a mixing of numbers there. I think the total number of H-2's from the West Indies is about 12,000 or 13,000.

Chairman FORD. 12,000 or 13,000?

Mr. SORN. Yes, sir.

Chairman FORD. And you would say on average they would spend how much time in the country?

Mr. SORN. In sugar cane 8,500 would spend about 20 weeks; of these, 2,500 would spend an additional 6 weeks in apples and the balance of about 3,000 would only be in for the 6-week period in apples.

Chairman FORD. An additional 6 weeks of the 20?

Mr. SORN. Twenty-six.

Chairman FORD. So, in other words, 20 weeks and 26 weeks?

Mr. SORN. No, sir; you would have about 6,000 strictly sugarcane; they would be in 20 weeks; another 2,500 workers would be both sugarcane and apples. So you would be 26 weeks.

Chairman FORD. That is what I am saying. You would have 6,000 for 20 weeks; an additional 2,500 for approximately 26 weeks.

Mr. SORN. I am sorry; you are right. The balance would be just 6 weeks; we are only speaking of H-2 agricultural employment basically on the east coast from the West Indies. We have no other experience.

Chairman FORD. You provide housing and that is a cost factor.

Mr. SORN. The housing is at no cost.

Chairman **Ford**. To the H-2's.

Mr. **Sorn**. That is correct.

Chairman **Ford**. Is transportation provided H-2 workers at no cost?

Mr. **Sorn**. If they complete half of the season, we pay for their upward transportation; if they complete the season—and 95 percent of them do—we would pay round-trip transportation.

Chairman **Ford**. What happens to the other 5 percent that would not complete the season?

Mr. **Sorn**. Some of them would go home for medical reasons, personal reasons.

Chairman **Ford**. Are you responsible for transportation for workers that go home for medical reasons?

Mr. **Sorn**. You are right; we would pay for medical; if it is a worker that goes home medical, we would pay him.

Chairman **Ford**. What if he didn't go home for medical reasons?

Mr. **Sorn**. If he breaches his contract—the workers do have representatives here from the islands to make sure the contract is complied with; if he does, if it is agreed he has breached his contract, he would pay his own way, but that is a very small number. We would pay him coming over if he completed half the contract.

Chairman **Ford**. If he does not complete half the contract, you would not pay him for coming over?

Mr. **Sorn**. That is correct.

Chairman **Ford**. You would take that out of his pay?

Mr. **Sorn**. No; we would bill the West Indies Government.

Chairman **Ford**. A portion of the meals, you say is provided, what do you mean by that? I know we are getting off the unemployment compensation tax issue, but I am trying to see the cost factors involved.

Mr. **Sorn**. We are only allowed to charge right now up to $5 per day for three hot meals. I am talking about Florida.

Chairman **Ford**. You prepare the meals and you charge them for three meals, but no more than $5?

Mr. **Sorn**. No more than $5. Basically, this season, all but one company will be $5; the other is about $4.50. We have to justify those costs to the Department of Labor before the season starts based on last year's costs. We can't charge what it costs us now. It is based on last year's costs. So we are always 1 year behind. That is why we say we have to subsidize every year because the cost of food and labor always goes up; so we are always behind as to what we can charge.

Chairman **Ford**. When you speak of recruitment costs, are you talking about trying to find American workers or West Indian workers?

Mr. **Sorn**. No; that is strictly the cost of finding American workers. We can review briefly, if you wish, what we have to do to go through that.

Chairman **Ford**. What is the expense involved?

Mr. **Sorn**. We calculated approximately $5 per worker for a BWI worker. We are referring all costs to the BWI worker for comparison purposes now. The total costs to find American workers, publicity, positive recruiters, transportation, everything, relates to a cost of about $5 for every foreign worker we bring into Florida.

Chairman **Ford**. Mr. Bafalis?

Mr. **Bafalis**. Thank you, Mr. Chairman. I think this is a very fruitful discussion. We are talking about unemployment compensation. But every time we get into this hassle, all of these extenuating circumstances become a part of it. Sometimes I wish we had jurisdiction over the H-2 program so we can deal with it more effectively.

Mr. Sorn, let me make a couple of comments, and I would like you to elaborate for the committee as to the recruiting and other things that take place, so the committee has an idea as to how expensive it is to get H-2 workers into America and what you have to go through.

If you did not have H-2 workers available, and if you couldn't find American workers, I would assume that many people in the agricultural industry would find themselves, out of necessity, using illegal aliens, and that has happened, if not in our State, in other States.

When you have an H-2 program, you eliminate the need for the illegal alien, because that worker is controlled both by our Government and the Government allowing him to come into this country to work. As you mentioned, they do have representatives here to make certain the contracts are fulfilled; they are treated properly; you don't discriminate against them; they have good living conditions, decent food, that sort of thing. I said earlier to a gentleman from the AFL-CIO that in certain countries you do pay social security benefits, and I would like you to confirm that is true.

Mr. **Sorn**. Yes; I might mention that the term "social security" as we use it here is much more broadly interpreted in foreign countries.

Mr. **Bafalis**. Is it called something else?

Mr. **Sorn**. No; it is called social security, but it includes old age, not only old age, but medical benefits, and in some islands it includes unemployment compensation. I couldn't tell you exactly with each of the five islands we deal with, but in their terms it includes much more than what we include in social security.

Mr. **Bafalis**. Would you in some detail tell this committee what is involved specifically prior to the time you can go to the Department of Labor to get certification to bring a certain number of workers into this country?

Mr. **Sorn**. Well, the recruitment process is almost ongoing. It is a year-round job. Our contacts with the Department of Labor at all levels, including the local level in Belle Glade, the State, the regional office, and the Federal Government, are continuous. They are all year long. We do comply with the criteria regulations, but from time to time the Department determines at one level or the other that there may be a supply of labor available in some area.

Mr. **Bafalis**. How do you go about trying to find that labor?

Mr. **Sorn**. OK, the special circumstances, the Department of Labor, for instance, we have worked with the Navajo Nation in Albuquerque and Gallup, N. Mex. We went there twice because they indicated they had a supply of labor.

Mr. **Bafalis**. Your requirement is, though, that you must make every effort to find American labor before you go overseas?

Mr. **Sorn**. That is correct; that is correct.

Mr. **Bafalis**. And you work through various employment offices around the country?

Mr. **Sorn**. Yes.

Mr. **Bafalis**. You run ads in newspapers?

Mr. **Sorn**. Yes.

Mr. **Bafalis**. Do you send recruiters, say, to the States of Texas, or California, or other places, to find these workers?

Mr. **Sorn**. Wherever there is a supply of labor that warrants our sending a recruiter, we will send him there. Let me back up and answer your question this way: We file the clearance order with the local employment service [ES] office. That is distributed to every ES office in the State of Florida.

Mr. **Bafalis**. An order that you need so many employees.

Mr. **Sorn**. Yes; it gives the description, what we are going to pay, that type of thing. We file that in Belle Glade in about May or June of each year. That is distributed to every office at least in the State of Florida and in all of the States in the Southeast region 4 of the Department of Labor.

So if a worker ever comes into that office at the time we need him, if there is just one worker, and if the local office thinks he is qualified to do the job, we will advance the transportation for him to come to south Florida.

Mr. **Bafalis**. You say you advance the transportation fee. If you find an American worker in the State of California and a local employment office says he is qualified to pick/harvest sugarcane, you then pay his transportation to your facility?

Mr. **Sorn**. No, sir, only to the extent that it costs us to bring the West Indies worker.

Mr. **Bafalis**. In other words, if it costs $100 to bring in a West Indies worker, you must advance $100 to that worker?

Mr. **Sorn**. That is an advance. If he comes to us and he stays half the season, then we do repay him for whatever it cost the entire way.

Mr. **Bafalis**. What happens once you make that advance if he doesn't show up?

Mr. **Sorn**. We lose the money.

Mr. **Bafalis**. You have no way of getting that money back?

Mr. **Sorn**. That is right, and that happens all the time.

Mr. **Bafalis**. If you didn't have to hire H-2 workers, if you didn't have that need, if you could find enough American workers, what would you be required to pay in the way of wages?

Mr. **Sorn**. Just the basic Fair Labor Standards Act minimum of $3.35 an hour.

Mr. **Bafalis**. $3.35. Would you be required to supply food?

Mr. **Sorn**. No, sir.

Mr. **Bafalis**. Housing?

Mr. **Sorn**. No, sir.

Mr. **Bafalis**. Would you be required to supply transportation?

Mr. **Sorn**. No, sir.

Mr. **Bafalis**. If, on the other hand, you know that you cannot find enough American workers, and you have to go into the H-2 program, then those requirements change, don't they, as it relates to any American worker that you have to hire?

Mr. **Sorn**. That is right.

Mr. **Bafalis**. You have to offer the American worker what is called an adverse effect rate?

Mr. **Sorn**. Yes.

Mr. **Bafalis**. This year it is?

Mr. **Sorn**. $4.69 in Florida.

Mr. **Bafalis**. If you are going to the H-2 program to hire an American worker, you must pay him $4.69 instead of $3.35?

Mr. **Sorn**. You cannot discriminate.

Mr. **Bafalis**. You must give him meals?

Mr. **Sorn**. We must offer him, that is right, three meals a day.

Mr. **Bafalis**. Do you have to give him the meals or the equivalent of the $5?

Mr. **Sorn**. No, sir; if he decides he is going to live on the outside, he can provide his own meals. We do offer him the opportunity.

Mr. **Bafalis**. If he wants meals, you have to give them to him?

Mr. **Sorn**. Right.

Mr. **Bafalis**. Do you have to provide housing?

Mr. **Sorn**. If he wishes to live in our labor camps; yes.

Mr. **Bafalis**. If he does, you provide that to him. You provide his transportation. As I understand it, if he stays there over half of the contract period, you provide his actual cost?

Mr. **Sorn**. From where he comes from; yes.

Mr. **Bafalis**. None of those expenses you would be required to pay if you didn't have to hire H-2 workers.

Mr. **Sorn**. And it is not the prevailing practice for agricultural employers in the State of Florida to do so.

Mr. **Bafalis**. One other question that has come up from the chairman, and I had the same question, myself. We notice only seven employers in Florida are in the H-2 program. Florida Fruits and Vegetables, which you represent, apparently also is in the program and hires H-2 workers for about another 150 growers; is that right?

Mr. **Sorn**. No, sir.

Mr. **Bafalis**. How does that work?

Mr. **Sorn**. The only growers certified in the State of Florida for H-2 workers are the sugarcane employers.

Mr. **Bafalis**. Are there only seven sugarcane employers?

Mr. **Sorn**. That is correct; there are more growers, about 150 growers.

Mr. **Bafalis**. Who cuts their cane?

Mr. **Sorn**. The co-op mills, primarily.

Mr. **Bafalis**. I see. Florida Fruits and Vegetables is also a grower?

Mr. **Sorn**. No, sir; we are a service association.

Mr. **Bafalis**. That is what I thought. You are not in the H-2 program, and you are not hiring any of these people, only the seven growers?

Mr. **Sorn**. We are the agent for the growers this year. Up until this year, we were the actual employer.

Mr. **Bafalis**. So you actually go out trying to find the American worker?

Mr. **Sorn**. Yes.

Mr. **Bafalis**. Then when you can't, you go to the Department of Labor?

Mr. **Sorn**. Yes.

Mr. **Bafalis**. I assume the apple and tobacco people have a similar situation.

Mr. **Karalekas**. Could I add one other cost which hasn't been mentioned, which I think is very significant. The H-2 program is a particularly special target of the migrant legal action program and the Department of Labor. Probably the single factor that eclipses all other costs we have been talking about here are legal costs.

There is no new individual employer or group in the last 8 years that has been able to get into this program without suing somebody. The Labor Department, so forth. It has happened with the Virginia tobacco growers; it has happened with the citrus growers in Arizona, with the peach growers in Maryland, with the vegetable growers in Texas. You can't get into the H-2 program as a small employer in the United States without filing suit to break the ice. The continuing costs, because of the fact that this program is a target of legal action groups, has been staggering.

So I think that is something to keep in mind, even though it is not directly relevant to this point.

Mr. **Bafalis**. I have gone over my time. Let me make two observations, and I will yield, Mr. Chairman. One is that if you have to pay this unemployment tax, is that going to have basically any effect on your bringing workers into this country?

Mr. **Sorn**. We would still need the same number of workers.

Mr. **Bafalis**. You would still have to have them?

Mr. **Sorn**. Yes.

Mr. **Bafalis**. The other argument made by the opponents of this legislation is that if you didn't have an H-2 worker program, that American workers would get higher wages in the field because you couldn't find anybody else. From what I know of the sugarcane industry—as I said before, for $200 an hour I wouldn't go out and cut sugarcane—Americans who are not trained to cut cane, at any price, just cannot go out and do that job 8 hours a day. It is one of the toughest jobs in the world.

So I think the argument that if you did not have H-2 workers available, which is not before this committee, quite frankly is an argument that shouldn't be used before this committee. It doesn't relate to higher prices for American workers.

Mr. **Sorn**. It is my judgment, because of H-2 workers, American workers are getting a higher wage than they would get if you didn't have H-2 workers. That is a point I was trying to make. The Belle Glade area of Florida, all the sugarcane is grown within a 25-mile radius, has a farm worker population in the vicinity of 20,000 workers, which includes the H-2 workers.

The program has been going on year after year after year. The adverse effect wage dictates that the employers of those workers pay a wage higher and perquisites—much more than Americans would get without the H-2 program. Every year, for instance this year, our adverse rate wage went from $4.09 to $4.69—almost 40 percent. Workers get around—the workers in that area know Jamaicans are going to get $4.69 an hour. What effect do you think that has on the American workers working with the other companies?

Mr. **Bafalis**. One last question. You represent Florida Fruits and Vegetables and also the pepper growers and tomato growers and others who do not use H-2 workers.

Mr. **Sorn**. Yes, sir.

Mr. **Bafalis**. Are the wage scales for those workers in the field, peppers, cucumbers, the rest of it, as high as they are for the American workers?

Mr. **Sorn**. The minimum wages are $3.35 per hour where they are paid by the hour.

Mr. **Bafalis**. That shows the difference where you don't have H-2 workers; they are getting a lot less money than Americans who are cutting sugarcane.

Thank you, sir.

Chairman **Ford**. I would like to pick up on a point made by Mr. Bafalis. I understood you to say earlier that the H-2 worker would pay up to $5 for the meal.

Mr. **Sorn**. Yes.

Chairman **Ford**. Mr. Bafalis, are you under the impression that the farmer pays—the employer pays, subsidizes the meal by $5, or that the worker pays up to $5?

Mr. **Bafalis**. No; the worker pays up to $5 a day for three meals, and we serve three hot meals in Florida.

Mr. **Sorn**. We estimate we subsidize 50 cents a day.

Mr. **Bafalis**. The American worker can pay that $5 and have those three meals or go home and have his meals. Knowing the cost as we know it, $5 is reasonable for three meals. It is costing your industry more.

Mr. **Sorn**. We estimate we subsidize 50 cents.

Mr. **Bafalis**. You are using last year's figures as you estimate what it is going to cost for this year?

Mr. **Sorn**. Yes, sir.

Mr. **Bafalis**. This is the final question from us: Mr. Hudson, you talked about the exclusion being made permanent. I notice Mr. Karalekas and Mr. Sorn talked in their statements about an extension. Does this mean that you think that there will never be a domestic work force in this country to pick this crop?

Mr. **Hudson**. No; it doesn't mean I don't think there ever will be, but I think it will be some time to come before there will be, as our past experience has shown us.

Chairman **Ford**. Mr. Karalekas, in your testimony you talk about an extension of the FUTA exclusion. Mr. Hudson's written statement talks about a permanent extension. Would you comment on this?

Mr. **Karalekas**. We have been coming back up here, as you know, for previous extensions. It seems to me that the Congress, to save itself this exercise every couple of years, ought to make the extension permanent. I don't foresee, at least I note applegrowers don't, the resurgence of a large migrant labor force in the United State. I think the domestic labor force—the trend has been downward for all of the growers represented by people at this table who, 20 to 30 years ago, used all U.S. workers.

Chairman **Ford**. But if the exclusion were made permanent, do you think growers would have any kind of incentive to develop a domestic work force?

Mr. **Karalekas**. We have a tremendous incentive to develop a domestic work force to save money. Unfortunately, we have had experience after experience after experience in New York, in Florida, in Maine, all over the country, in making the determined efforts to get American workers to take these jobs which are good-paying jobs. We are not talking about poorly paid jobs or underpaid workers. We cannot get them.

Chairman **Ford**. Thank you very much.

Mr. Pease, this is the panel on the crop growers. If you have any questions at this time from the panel, we would be happy to recognize you.

Mr. **Pease**. No; not at this time.

Mr. **Karalekas**. May I make one other brief point?

We have had a chance to review the statement by Michael Semler, of the Migrant Legal Action Program—the Government-funded legal services agency. We dispute the figures that Mr. Semler has used with respect to the New York applegrowers and would like to have the opportunity to present supplementary figures to show our side of the story. He has picked out the Hudson Valley of New York to try to demonstrate that the wages, working conditions, and so forth, of users of H-2 are lower than they are with nonusers. We would like to have the opportunity to present a supplemental statement to dispute this.

Chairman **Ford**. It will be made a part of the record.

[The information follows:]

Washington, D.C. *November 13, 1981.*

Re: Supplemental information submitted on behalf of the Farm Labor Executive Committee, Washington, D.C.

Hon. Harold E. Ford,
Chairman, Subcommittee on Public Assistance and Unemployment Compensation, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

Dear Chairman Ford: This letter is submitted by the Farm Labor Executive Committee on whose behalf I testified before the Subcommittee on Public Assistance and Unemployment Compensation on October 28, 1981. At the hearing, I requested and was granted the opportunity to submit a supplemental statement to correct certain misconceptions put forward to the Subcommittee by Michael Semler of the Migrant Legal Action Program. The Farm Labor Executive Committee and its 350 apple grower members wish to set the record straight with regard to the following aspects of the H-2 program:

(1) H-2 users pay higher wages and benefits than non-users.—The wages and benefits earned by workers employed by H-2 users universally exceed those paid to workers employed by non-users. This fact can be documented using the Domestic Agricultural In-Season Wage Reports for each of the states H-2 workers are employed and from employer payroll records.

Florida sugar growers offer and pay their workers at least $4.69 an hour versus the federal minimum wage of $3.35 an hour offered by most employers in that state. Typically, a sugar worker of average ability will earn $5.53 per hour. Virginia tobacco growers pay their workers $3.81 compared to the $3.35 per hour paid by virtually all other Virginia tobacco growers. And in each of the ten East Coast states where H-2 workers are employed as apple pickers, average hourly earnings paid by H-2 users are higher than those paid by non-users.

(2) Hudson Valley, New York H-2 employers pay more than non-H-2 employers.—In his statement of October 28, 1981, Mr. Semler attempts to convince the Subcommittee that H-2 users nationwide offer lower wages than non-H-2 users by using the Hudson Valley (N.Y.) apple growers as an example. In the first place, even if it were true that H-2 employers in a particular locality such as the Hudson Valley pay lower wages—which they do not—it is intellectually dishonest for an advocate

to conclude from this that the same is true throughout the H-2 program. It would be just as easy for one trying to prove the opposite point of view to isolate a single crop activity where wages offered by H-2 employers are higher. The same deficiency applies. The fact of the matter is that the Hudson Valley H-2 apple growers pay their apple pickers more than non-H-2 growers as will be seen from the information presented below.

In support of his position, Mr. Semler cites the fact that the prevailing wage rate among H-2 users for 1980 in the Hudson Valley was 43 cents per box while the rate for non-users was 46 cents. Mr. Semler uses this largely irrelevant wage indicator knowing full well that the true measure of a worker's earnings is what he receives in his pay envelope. Employees of H-2 users consistently receive fatter pay envelopes than employees of non-users.

An employer establishes his piece rate based on a multiplicity of factors such as crop size and density, terrain, tree height, type of fruit, etc. The piece rate, which is a bonus incentive wage, is set in such a way as to maximize the incentive to the worker while taking into account the crop factors just identified. A worker paid 43 cents per box does not necessarily receive less in his pay envelope than a worker at a different orchard earning 46 cents per box. In fact, it is just as often the case that because of crop conditions, tree characteristics and the like, the former will earn more than the latter.

New York State Department of Labor statistics taken from the 1980 Domestic Agricultural In-Season Wage Reports underscore this in the three apple growing regions of New York—Hudson Valley, Western New York, and Champlain Valley. As can readily be seen, the average hourly earnings received in a worker's pay envelope—the true measure of a worker's earnings—do not necessarily correlate with the amount of the piece rate. For example, in the Hudson Valley, (Table I), workers paid a piece rate of 43 cents per box earned an average of $4.89 an hour while workers paid 44 cents per box averaged considerably less—$3.64 per hour. In Western New York (Table II), workers earning 43 cents per box averaged $11.47 an hour while those earning 47 cents per box averaged $5.61 per hour. In the Champlain Valley (Table III), workers earning 45 cents a box averaged $3.49 an hour while workers earning 47 cents a box averaged $2.97 an hour.

TABLE I.—PRODUCTIVITY AND AVERAGE HOURLY EARNINGS OF PIECE-RATE WORKERS: 1980 HUDSON VALLEY APPLE HARVEST, DOMESTIC WORKER SAMPLE FOR "PEAK" WEEK OF HARVEST

Fresh market picking

	Average hourly earnings	
	Without makeup	With makeup
Rate and unit per 1⅛ bushel:		
$0.44	$3.64	
$.43	4.89	
$.42	3.40	
$.40	7.75	

TABLE II.—PRODUCTIVITY AND AVERAGE HOURLY EARNINGS OF PIECE-RATE WORKERS: 1980 WESTERN NEW YORK APPLE HARVEST, DOMESTIC WORKER SAMPLE FOR "PEAK" WEEK OF HARVEST

Fresh market picking

	Average hourly earnings	
	Without makeup	With makeup
Rate and unit per 1⅛ bushel—NET:		
$0.63	$9.76	
$.55	7.62	
$.52	6.24	
$.51	5.56	
$.50	7.54	
$.47	5.61	
$.45	6.83	
$.43	11.47	
$.40	4.00	

NET equals base rate without bonus attachment.

TABLE III.—PRODUCTIVITY AND AVERAGE HOURLY EARNINGS OF PIECE-RATE WORKERS: 1980 CHAMPLAIN VALLEY APPLE HARVEST, DOMESTIC WORKER SAMPLE FOR "PEAK" WEEK OF HARVEST

Fresh market picking

	Average hourly earnings	
	Without makeup	With makeup
Rate and unit per 1⅛ bushel:		
$0.63	$5.56	
$.62	7.06	
$.61	3.28	
$.60	5.27	
$.58	7.07	
$.57	5.48	
$.56	4.00	
$.52	3.80	
$.51	3.53	
$.50	4.09	
$.48	3.36	
$.47	2.97	
$.45	3.49	
$.40	1.74	$3.18

In short, the above tables show that the wrong way to calculate who pays higher wages—H-2 users or non-users—is by comparing piece rates offered. The payroll records of the New York apple growers demonstrate conclusively that their average hourly earnings exceed those paid to workers employed by non-H-2 users.

(3) Hudson Valley H-2 users pay unemployment taxes under state law.—Mr. Semler's efforts to convince the Subcommittee that Hudson Valley apple growers, in particular, enjoy an economic advantage because they use H-2s and thus avoid federal unemployment taxes, is also blatantly misleading. He states at page 7 of his remarks: "For these H-2 employers, the H-2 wage provisions do not offset the tax savings. . . ." In fact, the New York apple growers have no tax savings. They are required to pay unemployment taxes on all agricultural workers—foreign and domestic—under New York state law. (Section 564, New York State Labor Law). The growers pay an average unemployment tax of 4 percent which is roughly equivalent to the federal unemployment compensation tax.

(4) H-2 benefit package is more expensive than that offered to non-H-2s.—Finally, Mr. Semler argues that the non-wage benefits furnished by H-2 employers are no more expensive than those furnished by non-H-2 employers. He cites as an example the 1980 Hudson Valley wage report showing that 55 percent of the apple growers, including those who did not use the H-2 program, pay for their workers' transportation.

Our review of the same wage report and consultations with New York state officials confirm the fact that virtually all the employers counted in the 55 percent figure cited by Mr. Semler are H-2 employers. Very few, if any, non-H-2 employers pay free roundtrip transportation to their workers.

Moreover, even if a non-H-2 employer pays transportation costs, it is considerably cheaper to transport workers to and from domestic labor supply states than Jamaica. For the Hudson Valley growers, the average roundtrip transportation cost for U.S. workers is $160. The average roundtrip transportation cost for Jamaican workers was $363. Mr. Semler conveniently ignores this difference even though it amounts to 127 percent!

Finally, Mr. Ashton Hart, Executive Secretary of the Valley Growers Cooperative, Inc., of Milton, New York, advises that the per box cost of the non-wage H-2 benefit package for 1980 was 24 cents. A worker earning 43 cents per box, in effect, receives wages and benefits worth 67 cents per box. This is considerably higher than the 46 cent per box offered by non-H-2 users.

We trust that the foregoing clarifies the record for the Subcommittee. Hopefully, its members will recommend that Congress extend the current exclusion from federal unemployment taxes for employers of H-2 workers. For the reasons stated in our remarks to the Subcommittee of October 28, 1981, we believe the exclusion is a matter of equity and fairness.

Sincerely yours,

S. STEVEN KARALEKAS.

Chairman **Ford**. I would like to thank the members of the panel for appearing before the committee. Thank you very much.

At this time, the committee will recognize, representing the Migrant Legal Action Program, H. Michael Semler.

There is a quorum call on the House floor at this time. The Chair feels that we should recess, Mr. Semler, for an hour, due to the fact that there is a recorded vote on the House floor, and a recess would give members and also the witnesses an opportunity to eat lunch before the afternoon session. So I would like to stand in recess.

The committee will stand in recess until 1:30 this afternoon.

[Whereupon, at 12:37 p.m., the subcommittee recessed, to reconvene at 1:30 p.m.]

AFTERNOON SESSION

Chairman **Ford**. The committee will come to order.

Our next witness is Prof. Wilbur J. Cohen, L. B. J. School of Public Affairs, University of Texas.

We welcome you before the committee, Mr. Cohen.

STATEMENT OF WILBUR J. COHEN, L. B. J. SCHOOL OF PUBLIC AFFAIRS, UNIVERSITY OF TEXAS

Mr. **Cohen**. Thank you, Mr. Chairman.

As you may know, I was Chairman of the National Commission on Unemployment Compensation, pursuant to the statutory provisions that created the Commission some years ago. Our Commission made a full and comprehensive report on the entire unemployment insurance system.

As you may be aware, I have here the reports that we submitted to Congress. They don't equal the 5-foot bookshelf of books, but our summary of our report is in here, and we have a good deal of information on not only the questions which are before the committee today, but on other aspects of unemployment insurance.

I will just summarize my views and the Commission's views where they are applicable. Then I would be available to answer questions because I am sure you have gone into this extensively before I have testified.

No. 1, I favor making the Reed Act permanent, as did the Commission. You will find their views on that at page 130 of the report.

Second, I favor repeal of the exclusion from the Federal Unemployment Tax Act of the alien farmworkers, as did the Commission on pages 24, 29, 30, 33, and 34, in which that subject is extensively discussed with the pros and cons which the Commission went into at the time.

I would leave this entire area to the States. I think this problem, like several of the other problems, is so complex with so many different points of view and fraught with so many administrative difficulties in the application of the program, particularly at a time when the administrative grants are being cut, that I would favor leaving this whole item to the States to do as they wished in connection with their local problems.

Third, I would also favor repeal of the retirement pay offset, as did the Commission at pages 31 through 34. I would leave this whole area to the States exactly as it was before Congress got involved in this through a Senate amendment.

This was not a House action, Mr. Chairman. This was a Senate amendment which threw the States into complete confusion. I would go back to the way it was for about 35 or 40 years—leave the States handle this problem in connection with their own State situation.

No. 4, I would extend the age of student interns whose wages are excluded, since those under age 20 are already excluded and, of course, we have more and more older student interns. That would just make it consistent.

I also favor repeal of the denial of benefits to ex-servicemen who have an opportunity to reenlist. I would again leave this area entirely to the States, as it was for many years, and make every State do what the State laws provide, which is to determine whether it is voluntary leaving or not. That is the State system that we have in this country. That is the structure we have had these 45 years.

Again, when Congress interfered in that, I think you are basically changing the nature of the Federal-State system. Now, if that is what you want to do, I would be glad to come back and testify how you could have more Federal intervention on the State unemployment insurance system.

That is not what we are talking about. We are talking about how to return some of these functions to the States. I would not extend the exclusion of certain fishermen that was put in one year for the Tax Act because that gets into this whole complicated problem, which for 50 years has been a problem, at least in unemployment insurance and social security, whether self-employed people and independent contractors are in or out of coverage.

Here again, let the States decide which ones of those fishermen are bona fide independent contractors and which are not, and leave that whole problem to the States and not get into that here.

That concludes the six items before you. I only want to take 1 out of maybe 100 or 200 recommendations we made to Congress and to the President in this report. I would like to recommend very strongly to you that all State and Federal payroll tax funds for unemployment insurance be excluded from the Federal unified budget.

This was unanimously adopted by employers, employees and the public. See our Commission report at the appropriate point summarized at page 2.

I do not see any justification why employer contributions to the Tennessee and the Florida State unemployment laws should be included in the Federal unified budget. Just stop and think of that for 1 minute.

An employer in Tennessee contributes to a State law in Tennessee, and an employer in Florida contributes to a State law in Florida, and every penny of what he has contributed under the State law finds its way into the Federal unified budget for one simple fact—simply because that money under the law has to be deposited in the Federal unemployment trust fund. Therefore, all of it is swept into the Federal unified budget and immediately becomes part of the Federal Reconciliation Budget Act.

I submit to you that unemployment insurance and social security, which are supposed to be balanced by the income that they receive from employers and employees in social security and from employers in unemployment insurance, should not be considered as part of the Federal general budget, should be outside it, and balanced by their own internal finances.

I feel very strongly about this. I think that is the most important amendment now pending, both in connection with the whole fiscal integrity of social security and unemployment insurance.

That concludes my statement, Mr. Chairman. I would be glad to answer any questions.

Chairman FORD. Thank you very much, Mr. Cohen.

At this time the Chair recognizes Mr. Bafalis.

Mr. BAFALIS. I only have one question, Mr. Chairman, as it relates to alien farmworkers.

You say, Doctor, that you would leave this area to the States. The problem is—as it is right now, it is left to the States, as a matter of fact. The States do have the right to tax unemployment compensation. In fact, several States do that at the present time.

If we repeal, as you have suggested, this provision, then the States don't have any say about it at all because it is automatic. So it can't be both. It has to be one or the other.

Mr. COHEN. Well, I am saying I want to leave that coverage matter to the States to exclude or include as they see fit.

Mr. BAFALIS. But they can't. If we repeal it and if Federal law applies, the States automatically must——

Mr. COHEN. No, but I am saying I would put in a provision that in effect allowed it to be with the States.

Mr. BAFALIS. I see.

Mr. COHEN. As you know, we held extensive hearings in Florida and elsewhere.

Mr. BAFALIS. Yes, I know you did.

Mr. COHEN. I realize the pros and cons of this issue. I realize the problem of the employers and the employees and the public and so on. We went into it very extensively. It is one of these difficult questions in which there is merit on both sides and very difficult decisions, and if you come down 51 percent on one side, like an election, you have got to go 100 percent of the way. There is no alternative.

Mr. BAFALIS. I take it you are making the same observation as it relates to item five also because again you are dealing with the Federal situation. We ought to put something in that changes it so that the States would have that jurisdiction as relates to the individual serviceman.

Mr. COHEN. Yes. Let me just amplify on that. Every State law has a provision that determines when you apply, whether you have voluntarily quit your job or if they refer you to suitable work, whether you have refused suitable work with good cause.

Now, by and large, of course, mere refusal to reenlist has ordinarily not been considered a voluntary refusal. But in my opinion, if a State wanted to say, for example, a serviceman who didn't reenlist should not get unemployment benefits for the first 3 weeks or the first 6 weeks, or whatever their State law provides for other people, that is a determination they ought to make.

I might not agree with it, but that is not the point. I think that under the system that we have in which practically all the major decisions have now been left to the States on whether you are eligible, how long you are eligible, whether you voluntarily left, whether there is misconduct, whether you have refused suitable work, those are all State decisions.

If you want to follow the way we got it now, I would say the tail ought to go with the hide. Now, if you want to change the system and you want to have Federal requirements, then I think we have got a completely different issue.

Our Commission, quite frankly, has made recommendations for additional requirements, but I don't think that is what you are discussing today. So I come before you to say that our Commission felt it would be better to keep that consistent with the structure of the present Federal-State system.

Mr. BAFALIS. Thank you, Mr. Chairman.

Chairman FORD. Thank you very much, Mr. Cohen.

Mr. COHEN. Thank you.

Chairman FORD. Mr. Michael Semler, representing the Migrant Legal Action Program, is our next witness.

STATEMENT OF H. MICHAEL SEMLER, ATTORNEY, MIGRANT LEGAL ACTION PROGRAM, INC.

Mr. SEMLER. Thank you, Mr. Chairman.

Chairman FORD. I apologize if we have inconvenienced you. We appreciate the fact that you have cooperated with us. You may proceed.

Mr. SEMLER. Thank you, Mr. Chairman.

I am Michael Semler, an attorney with the Migrant Legal Action Program, which is located here in Washington. This afternoon I would like to address the relationship between the unemployment insurance tax and use of temporary foreign workers.

I have been representing migrant workers in connection with the H-2 program for 4 years. This experience has convinced me that that program is one of the major obstacles in improving working conditions for farmworkers. This system is so deeply flawed that foreign workers are omitted without meaningful determination of whether U.S. workers are available.

One important aspect of the H-2 program falls within the jurisdiction of this subcommittee. In at least 30 States employers can avoid the unemployment insurance tax by hiring H-2 workers. Since these growers also avoid the social security tax, they can receive a tax windfall of over 10 percent of their taxable wages.

This morning Mr. Karalekas was kind enough to preview my statements with some comments on the figures. I am glad he did so because it gives me an opportunity to speak to one of the major problems in this area. One-half of the H-2 program is almost wholly unregulated; that is, dealings between the growers and the Govermment of Jamaica, Government of Mexico in some cases, and all the other foreign Governments. As a consequence, the figures in terms of savings and even number of workers used are hard to come by, unavailable in many cases to the Government, Department of Labor, and INS.

What I have tried to do in my statement is to begin the process of providing this discussion with some specifics. I know the chairman was interested this morning in getting the number of workers involved and amount of savings. What I have tried to do in my statement is begin that. If the employers can revise or correct anything in here, I think they would contribute to our discussion if they would do that.

I believe the applegrowers in the New England area realize a FICA savings of over $750,000 by using H-2 workers each year. Virginia tobacco growers save approximately $180,000 in FICA taxes. Florida sugarcane producers have acknowledged tax savings of $474 per worker under these tax laws, which is over $4 million for the entire H-2 work force in Florida.

Growers often argue, as you heard this morning, that these tax savings are offset by special costs associated with the H-2 program. An employer seeking H-2 certification must provide certain benefits not required by law of those not seeking H-2's. However, the only question of economic significance is whether the benefits requirement under the H-2 program are above those of non-H-2 employers by the forces of the market. The real issue is: What would they be required to pay for labor if they did not use the H-2 program.

I have attempted to answer this question in a single applegrowing area, Hudson Valley in eastern New York, where approximately 50 percent of the employers use H-2 workers. Using data generated by the New York State Employment Service, I have found the following: First, in the last four seasons H-2 users in the Hudson Valley have paid lower wages than their neighbors who did not use H-2 workers.

Second, H-2 employers in the Hudson Valley incur no greater housing costs than they would if they operated outside the H-2 program. Ninety-seven percent of the Hudson Valley employers who recruit domestic workers interstate provide free housing.

Third, the H-2 regulations simply reflect the prevailing practice in the Hudson Valley as to transportation expenses. Fifty-five percent of the applegrowers in this area including those who did not use the H-2 program, pay for the worker's transportation.

Fourth, the Hudson Valley growers incur no additional meal cost because of the H-2 program. They are not required to serve meals, but just are required to provide kitchen facilities. Many do that. Even if they serve meals, they may charge the actual cost, up to $5 a day. Non-H-2 growers in the area provide meals, either directly or through their crew leaders, under the same terms.

At least for the Hudson Valley of New York, the tax windfall available to H-2 users is not offset by any special cost. This type of incentive to use foreign labor is inconsistent with any rational temporary program. Indeed, the Reagan administration has specifically proposed under the new Mexican "guest worker" proposal that employers would be required to pay unemployment insurance taxes.

Finally, exclusion of H-2 wages is inconsistent with the rationale of the unemployment insurance system. Periodic unemployment is not caused by a particular employer, employee, or even industry. Consequently, the system provides that the burden of unemployment will be shared by all employers. Without this sharing, unemployment tax on certain industries would be unbearable.

Conversely, maintaining employee purchasing power benefits all businesses. Employers selling these apples, tobacco products and sugar benefit directly from the general economic good health.

For these reasons, the unemployment insurance system has never recognized a connection between the employee's future eligibility and his employer's obligation to pay taxes.

The exclusion for H-2 workers also unfairly discriminates against other employers. Apple and tobacco growers who hire only U.S. workers are taxed more highly than their immediate neighbors. Employers throughout the State must pay higher taxes because certain agricultural employers are not taxed at all, which is all the more fair because these employers contribute to unemployment by not hiring domestic workers. Further, the H-2 exclusion applies only to agricultural H-2's discriminating against employers who use H-2's in nonagricultural work. Finally, continuation of this exclusion would penalize employers using Mexican nationals under the administration's guest-work program.

The National Commission on Unemployment Compensation, as you have just heard, recommended that the H-2 exclusion be deleted. Earlier this morning you heard the Reagan administration recommend the same thing. I urge this subcommittee to adhere to those recommendations and allow the H-2 exclusion to expire at the end of this year.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF MICHAEL SEMLER, MIGRANT LEGAL ACTION PROGRAM, INC.

Mr. Chairman, I am Michael Semler, an attorney with the Migrant Legal Action Program, which is located here in Washington. We are a non-profit law firm representing indigent migrant and seasonal farmworkers. For over 10 years we have been working on behalf of farmworker clients in litigation and through administrative and legislative advocacy. Our overriding goal is improvement of the employment conditions of one of our nation's most abused working groups.

On behalf of my farmworker clients, I would like to speak today exclusively about the relationship between the unemployment insurance tax and the use of temporary foreign workers in agriculture. Under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act of 1952, employers may bring aliens to the United States for temporary labor "if unemployed persons capable of performing such . . . labor cannot be found in this country." Primary operational responsibility for protecting U.S. workers and working conditions under this program has been placed with the U.S. Department of Labor (DOL). Before an employer can obtain H-2 workers he must first seek "certification" from DOL that no U.S. workers are available and that the admission of the alien workers will not "adversely affect" U.S. working conditions. 8 C.F.R. § 214.2(h)(3). Between 15,000 and 18,000 foreign workers are certified each year for temporary agricultural and logging employment in the United States. A slightly smaller number of H-2 workers are actually admitted. The H-2 workers employed in agriculture are concentrated in apples in 10 Northeastern states, tobacco in Virginia, and sugarcane in Florida.

I have been involved in representing U.S. farmworkers in connection with the H-2 program for four years. This experience has convinced me that the H-2 program is one of the major obstacles to improving the wages and working conditions for farmworkers in those areas where it is used. Although the statutory provisions were clearly intended to ensure priority in employment to U.S. workers, *Elton Orchards* v. *Brennan*, 508 F. 2d 493 (1st Cir. 1974), the certification system is so deeply flawed that H-2 workers are being admitted each year without any meaningful determination of whether U.S. workers are available. Further, this program allows employers such complete control over the foreign workers during the selection process and after admission that they become a captive "subclass" within our society, legally admitted but nevertheless denied most employment related protections.

The many problems in the H-2 program need not be detailed here, for this issue lies primarily within the immigration jurisdiction of the respective Judiciary Committees (which are currently holding hearings on the H-2 program and related immigration issues in connection with the Reagan Administration's new "guestworker" proposal). However, there is one important aspect of the H-2 program which falls within the jurisdiction of this subcommittee, i.e. the tax rewards provided agricultural employers who use H-2 workers.

I. THE TAX INCENTIVES TO HIRE H-2 WORKERS

The Unemployment Compensation Amendments of 1976 extended unemployment insurance coverage to large agricultural employers, effective January 1, 1978. However, a two-year temporary exclusion was provided at 26 U.S.C. § 3306(c) for wages paid to alien workers admitted under the H-2 program. In 1979 this exclusion was extended in part until the end of 1981. Because of this exclusion, many agricultural employers need not now pay unemployment insurance tax on the wages paid to these aliens.

This exemption puts U.S. workers at a competitive disadvantage. In at least thirty states, including the major H-2 states of Virginia, West Virginia, and Florida, an employer who hires alien workers can avoid the unemployment insurance (FUTA) tax altogether, saving approximately 3 to 5 percent of his taxable payroll. Since these growers also avoid the 6.65 percent social security (FICA) tax 26 U.S.C. § 3121(b)(1), an employer can receive a windfall of over 10 percent of his taxable payroll merely by switching to alien workers.

This produces large tax savings even over a short harvest season. While the exact figures are available only to the growers, the following chart provides a rough estimate of the FICA and FUTA savings in three crops:

Northeast Apples

FICA: Per worker, assuming an 8 week season at $4.89 per hour, 48 hours per week	$125
Total FICA savings for H-2 apple growers based on 6,113 H-2's certified for 10 states in 1980	763,330
The FUTA rate varies by State and employer, but a savings of $56 per worker would be realized at a 3 percent tax rate (assuming the wage rate and season noted above) in those states which exclude H-2 wages	56

Virginia Tobacco

Assuming a 3 percent FUTA tax rate, the Virginia tobacco growers realize the following total savings on their FICA and FUTA tax:

Per worker, assuming a 4-month season at $3.51 per hour, 48 hours per week	$260
Total FICA and FUTA savings, based on 700 H-2 workers in 1980	182,000

Florida Sugarcane

Based on figures supplied by the Florida Fruit and Vegetable Association in recent testimony before the House immigration subcommittee, the Florida sugarcane companies realize the following total FICA and FUTA savings:

Per worker, assuming a 20 week season at $200 per week and a FUTA tax rate of 5.2 percent	$474
Total FICA and FUTA savings, based on 8,500 H-2 workers	4,029,000

Tax savings of this magnitude obviously give the individual growers, as well as their industries as a whole, a tremendous incentive to use foreign labor.

II. GROWER CLAIMS OF "OFFSETTING COSTS"

Growers using H-2 workers often argue that these tax savings do not cause employers to favor H-2 workers over U.S. workers because the savings are offset by "special costs" associated with the H-2 program. The costs usually cited are the "adverse effect wage rate" (AEWR), transportation, housing, and meals. However, these claims focus on legal requirements rather than economic realities.

An employer seeking H-2 certification is required by law to provide certain benefits (to both U.S. and foreign workers) not required by law of those not seeking H-2 certification. However, the only question of economic significance is whether the benefits required under the H-2 program are above those required of non-H-2 employers by the forces of the market. The real issue here is: What would these employers in fact be required to pay for labor if they did not use the H-2 program?

This question can only be answered by a detailed analysis of the wages and working conditions offered by other employers in the same market who do not use H-2 workers. In the following discussion I have attempted to make this analysis for a single apple growing area, the Hudson Valley in Eastern New York, where approximately half the workforce (56 percent) is composed of H-2 workers. As shown below, use of the H-2 program by Hudson Valley apple growers in fact rarely imposes transportation, housing, food, or other costs which these growers would not otherwise be required to pay. Moreover, rather than paying higher wages, the H-2 users consistently offer lower wages than their immediate neighbors who do not use H-2 workers.

1. Wage rates

H-2 Users Pay Lower Wages Than Non-Users.—The Department of Labor is authorized to certify the need for foreign labor only where the admission of H-2 workers "will not adversely affect the wages and working conditions of workers in the United States similarly employed." 8 C.F.R. §214.1(h)(3). This seems to require that the H-2 employers offer wages at least as high as are being offered by non-H-2 users in the same area. Nevertheless, the employment service's own wage surveys show that just the opposite is true.

Each fall the Job Services Division of the New York State Department of Labor conducts a survey to determine the actual piece rate wages being paid in the apple growing regions of the state. This information is compiled, analyzed, and reported to DOL in the Domestic Agricultural In-Season Wage Report. The primary purpose of this report is to determine the "prevailing wage rate" among domestic apply workers in the various regions. The Wage Report for the Hudson Valley breaks this information down further, comparing the piece rates paid to U.S. workers employed by growers also using H-2 workers ("Users") with the piece rates paid to U.S. workers employed by growers not using H-2 workers ("Non-users"). The following chart shows the prevailing wage paid by these two groups for the period 1977 through 1980:

	1977	1978	1979	1980
Users of H-2 workers	$0.38	$0.38	$0.40	$0.43
Nonusers	.40	.42	.45	.46

For at least the last four years the prevailing wage among H-2 users in the Hudson Valley area has been below that paid by growers in the same area who do not use H-2 workers. During this period H-2 users have paid from 5 percent (1977) to 11 percent (1979) less than their non-user neighbors. For these H-2 employers, the H-2 wage provisions do not offset the tax savings, but add another major incentive to use H-2 workers.

Wages Paid By H-2 Users Do Not Increase At The Same Rate As The AEWR.—The H-2 users dominate the Hudson Valley apple market in terms of both employers (51 percent of the employers use H-2's) and the number of workers employed (67 percent of the domestic workers are employed by growers who also use H-2's). As a result these growers in effect set the overall "prevailing wage." For example, DOL's official prevailing wage rate for this area in 1980 was $0.43, despite the fact that the rates among non-users were much higher (in some areas, $0.60 per box).

Absent further intervention by DOL, the H-2 users could block any increase in the prevailing wage from year to year simply by agreeing among themselves not to offer any more than was offered the preceding season. DOL's "adverse effect wage rate" (AEWR) mechanism is designed to prevent this by each year increasing the minimum wage which H-2 users can offer. However, the AEWR is set only on an hourly basis. Although regulations provide that increases in the AEWR must be translated into corresponding increases in piece rates, this has not been enforced. As a result, H-2 users have increased their piece rates much more slowly than the AEWR has increased.

The following chart shows the change in the AEWR for New York and in the prevailing piece rate in the Hudson Valley between 1977 and 1980:

	1977	1980	Percent increase
AEWR	$2.70	$3.18	17
Piece rate	0.38	0.43	13

During this four year period, the AEWR increased 17 percent, but the piece rate paid by the Hudson Valley H-2 users increased only 13 percent. Clearly DOL is doing very little to ensure that the AEWR has a real impact on the actual wage rate.

Even more telling is the disparity between the increase in the AEWR and the actual earnings of U.S. workers in the Hudson Valley during this period. The average hourly earnings of all U.S. workers in this area during the peak week of the harvest were as follows:

Average hourly earnings:	
1977	$4.76
1980	$4.89
Percent increase	2

Thus, the 17 percent increase in the AEWR for New York between 1977 and 1980 meant only a 2 percent increase in the actual earnings of U.S. workers in the Hudson Valley.

2. Housing

The H-2 users often argue also that the FICA and FUTA tax savings are offset by the fact that the H-2 regulations require that free housing be provided. This claim is similarly without substance for the Hudson Valley employers, for the growers would incur this cost even if recruiting outside the H-2 program. The above-mentioned Wage Report for 1980 states that "97 percent of those employers who employed interstate workers" (H-2 workers are not counted as interstate workers) in the Hudson Valley provided "free housing." Moreover, regulations of the U.S. Employment Service now provide that growers using the employment service must assure that "no cost or public housing" will be provided by the employer. 20 C.F.R. § 653.501(d)(2)(xv) and (e). Thus, the H-2 growers experience no increased cost in this area because of the H-2 regulations, for they would have to provide for housing even if they did not use the H-2 program.

3. Transportation

Defenders of the H-2 program also argue that their tax savings are offset by the requirement that they pay for transportation to the worksite (payment must be made after 50 percent of the contract has been completed). Here too, however, the H-2 regulations only incorporate the existing practice even among non-users. The 1980 Wage Report for the Hudson Valley indicates that 55 percent of the apple growers, including those who did not use the H-2 program, paid for the workers' transportation. Moreover, it is certainly the case that other workers received transportation costs indirectly, i.e. through the crewleader. If the H-2 users abandoned the H-2 program, they would in most cases be required by economic reality to continue paying transportation costs, either directly or indirectly.

4. Meals

The H-2 employers also claim the tax savings are offset by the requirement they must provide meals to workers recruited under the H-2 program. This is misleading on three grounds. First, the growers are not required to provide meals, but may choose instead to provide kitchen facilities and allow the workers to purchase and prepare their own food. Many H-2 growers in the Hudson Valley area follow this practice as to the U.S. workers they employ which is exactly what they would be doing if they were not also using H-2 workers. Second, even if the grower provides the meals, he may charge the workers for the actual cost, up to $5.00 per day. Given the low quality of the meals (e.g. cold sandwiches served in the fields as lunch) and the economies of scale involved, the meal requirement ordinarily costs the growers very little. Third, other growers in the area provide meals either directly or through crewleaders, on similar terms. Thus these growers would again encounter the same costs outside the H-2 system.

Agricultural employers reap a tax windfall whenever they employ H-2's rather than U.S. workers. The foregoing analysis demonstrates that at least in the Hudson Valley of New York this windfall is not offset by any "special costs" incurred by the growers solely because of their use of the H-2 program. To the contrary, H-2 users pay lower wages than non-users, thus reaping additional financial benefits. This is inconsistent with the basic intent of the existing temporary labor program. Indeed, it is for this reason that the Reagan Administration has recommended that in its new Mexican guestworker program employers would be required to pay unemployment taxes.

III. EXCLUSION OF H-2 WORKERS IS INCONSISTENT WITH THE UNEMPLOYMENT INSURANCE SYSTEM

Employers using H-2 workers attempt to justify the FUTA exclusion on the ground that an employer should not be taxed on behalf of workers who will leave the U.S. and never collect unemployment benefits. This argument ignores the "pooled insurance" nature of unemployment compensation. The FUTA scheme rests on the knowledge that periodic unemployment is not caused by the employee nor his industry alone, but has broader economic and social causes. Consequently, the system provides that the burden of unemployment in one industry will be shared by employers in all other industries. Without this sharing, the unemployment tax on certain industries would be unbearable and the system would collapse. To avoid this, many employers routinely pay more into the fund than will ever be recovered by their employees.

Conversely, the unemployment compensation system recognizes that maintaining employee purchasing power during periods of unemployment is of benefit to all businesses, not only the industry in which the recipient was employed. As stated by President Roosevelt in 1934:

" . . . it is my confident belief that such funds will, by maintaining the purchasing power of those temporarily out of work, act as a stabilizing device in our economic structure and as a method of retarding the rapid downward curve and the outset of severe economic crisis."

Employers selling apples, tobacco, and sugar obviously benefit by the maintenance of public purchasing power and of general economic good health.

For these reasons the unemployment insurance system has never recognized a connection between a particular employee's future eligibility for benefits and an employer's obligation to pay taxes. The National Commission on Unemployment Compensation stated this principle well in its Interim Report:

"At no time has the issue of whether an individual would personally be eligible for benefits at a future date been the basis for determining whether services should or should not be covered employment". (p. 104).

Concerns about disproportionate payments are dealt with by the "experience rating." Under existing law in most states, businesses whose workers rarely collect unemployment insurance are taxed at a lower rate than other employers. Consequently agricultural employers who use a high number of H-2 workers would in any event pay unemployment insurance tax at a lower rate than most employers.

To continue the exclusion for H-2 wages also unfairly discriminates against those employers who use U.S. workers. First, those apple and tobacco producers in H-2 areas who hired only U.S. workers are taxed more highly than their neighbors while selling in the same market. Second, these and other employers throughout the relevant states are compelled to pay increased unemployment insurance taxes to cover payments to unemployed workers in that state—workers the H-2 users (who pay no UI tax) have refused to recruit. Third, the present scheme discriminates against those non-agricultural employers who employ H-2's but nevertheless must pay the unemployment insurance tax on wages paid to their workers. Finally, exclusion of wages paid to H-2 workers would arbitrarily discriminate against employers using Mexican nationals under the new Reagan Administration "guestworker" program, who would be required to pay unemployment insurance taxes. Thus this H-2 exclusion undermines the rationale of the FUTA system in a variety of important regards and creates arbitrary distinctions among employers in the same area.

IV. CONCLUSION

The National Commission On Unemployment Compensation recommended that the H-2 exclusion be deleted (Final Report, page 27). This subcommittee should adhere to that recommendation and allow the H-2 exclusion to expire at the end of 1981.

Chairman FORD. Thank you very much, Mr. Semler.

Mr. Bafalis?

Mr. **Bafalis** I have a lot of questions, Mr. Chairman. I don't know that we really want to spend that much time at this late hour.

I want to thank Mr. Semler, first of all, for condensing your statement for us. I have a few questions relating to the prepared statement that was submitted to the committee.

On page 2, Mr. Semler, the first paragraph, you state:

> Further, this program allows employers such complete control over the foreign workers during the selection process and after admission that they become a captive subclass within our society, legally admitted but nevertheless denied most employment related protections.

Would you list for this committee what those are that they are denied?

Mr. **Semler**. I would start off with the selection process itself. As I said earlier, the process is not regulated——

Mr. **Bafalis**. That is not my question. What you said is, because of that process, once they are admitted, that most employment-related protections are denied them. My question is, What are those protections that are denied once they have been admitted. That is after the selection process.

Mr. **Semler**. Unfortunately, it is arbitrary to divide them like that. You can't. If you would like me to explain why it is they are denied these things, you have to understand how they are recruited.

Mr. **Bafalis**. Let me tell you what I read into the statement and the reason I really am somewhat concerned.

It is very easy to say somebody becomes a slave and a captive of the employer and he is denied all of his rights. I am asking what rights is he being denied? You made that statement.

Mr. **Semler**. I think I deserve an opportunity——

Mr. **Bafalis**. Go ahead, sir.

Mr. **Semler**. What I would like to do is explain how the recruitment takes place in the foreign country, which explains why these workers are so powerless when they get here.

One of the points is that the process is not regulated, so that the employers can go to Jamaica, for example, and hand-pick exactly the workers they want. The workers are screened first politically. They have to have a ticket from the Jamaican Legislature. Then this pool is screened further, for physical qualifications and past work experience. Further, they are screened by sex and by age, so that the employer gets a prime work force of men between roughly 20 and 40, all of whom have good work records and know the only way they can come back to this country, go to the United States, is if they perform according to the grower's demands once in the United States.

Once they are there, then this gives the grower control over their work patterns. For example, if they don't accept the work on exactly the conditions offered, they can be returned. I should add, that they have a visa which limits them to employment with only this employer, and only a predetermined wage, at only this location, and for only the period authorized.

So if they don't work according to those terms, they become illegal and cannot remain in the country and be, in fact, deported.

Another example is——

Mr. **Bafalis**. Let me ask you a question. Do you have any statistics as to how many are repeat H-2 workers who after working in these terrible conditions want to come back every year?

Mr. **Semler**. I think there is a difference between those who want to come back—I don't know that figure—and those who do.

Mr. **Bafalis**. Those who apply to come back.

Mr. **Semler**. I don't have that figure. There is a program that cycles the workers so not all who want to come back could come back. New blood is——

Mr. **Bafalis**. I think you are begging the answer to my question, which is, after they have experienced a season of harvesting in this country, do your statistics—you have obviously done a lot of research, as I read your statement—show that those people, after having endured this hardship in this country, that they apply the following year in their native homeland to come back, or was it so bad they decided they don't want to come back?

Mr. **Semler**. As I say, I don't know the figures. I would agree with the thrust of your question, which seems to be that most of them probably do want to come back.

Mr. **Bafalis**. You bet your life they do.

Mr. **Semler**. I think you will find out why if you look at the situation in their country and earnings they can earn here, how far it carries them. You would find a large percentage of them earn their whole year's income in this country. Consequently, the sugarcane employers, for example, have great control over them.

Mr. **Bafalis**. Let me ask you another question. I don't know anything about apples. I am at a great loss—and most of your statement deals with apples—but my understanding comes from one of the witnesses who testified this morning who received permission from the chairman to at least respond to your statements in apples.

But are you saying that from what you have found in the Hudson Valley area, as it relates to apples, that the same thing applies to the Virginia tobacco growers, and the same set of numbers applies to Florida sugar growers? Is your study just as it relates to the apple situation in the Hudson Valley?

Mr. **Semler**. The figures I have introduced relate just to the Hudson Valley, but I believe the same disparity between wages also exists in the other apple areas in New York. I have gotten those figures, too.

Mr. **Bafalis**. What about in Virginia?

Mr. **Semler**. I think it is also true in West Virginia.

Mr. **Bafalis**. Can you give us those numbers?

Mr. **Semler**. They can be obtained. The problem is that in some States, the State agency doesn't gather the figures so as to distinguish between users versus nonusers.

Mr. **Bafalis**. What I am saying is, if you made an assumption based on your research up in the Hudson Valley, at this point in time, except for a suspicion on your part, you really don't know what figures are in Virginia or in the tobacco area or the sugarcane industry.

Mr. **Semler**. That is right. As I said earlier, the problem——

Mr. **Bafalis**. I don't know anything about apples. I would, if you were talking about sugar.

Mr. **Semler**. Mr. Sorn, in his statement today, didn't provide figures he has provided in other cases. For example, 2 weeks ago, in the House Immigration Subcommittee, he submitted a breakdown showing costs savings in terms of FUTA and FICA being $474 and also the additional costs he alleged involved in using H-2 workers.

Mr. **Bafalis**. In response to my question this morning, though, he did say in a neighboring community where they are harvesting cucumbers, tomatoes, and peppers, and not using H-2 workers, that the cost of labor there was $3.35 an hour versus the adverse effect rate of $4.69, and that housing didn't have to be supplied and that the meals that are subsidized regularly at a $5 maximum were not available. Transportation was not required to be supplied.

So in neighboring communities 20 miles apart—and they are both in my district, so I know what happens in both areas—there is a vast disparity because of the H-2 worker provisions.

Again, Mr. Chairman, I can only speak from intimate knowledge of the sugarcane industry, which I have represented now for 10 years here, and a previous 6 years in the State legislature.

We have a unique problem. I don't know whether or not the apple industry does, but I am told by their representatives that they do. There just are not American workers available.

You can, as a practical matter, Mr. Semler, collect unemployment compensation, you can collect social security, you can raise the adverse effect rate even higher. You are not going to find Americans that are going to come down and cut sugarcane.

This has been a traditional problem for years in Florida. It is a very tough problem. Picking apples is something I did when I was in high school. It may be a little bit easier, but I am also told that many of the people who pick apples come down and cut sugarcane. So they do both.

Now, you know, you just might want to spend some time down in Clewiston and around Belgrade and go out into those sugarcane fields and see what I am talking about. You might understand the real problem we have.

Mr. **Semler**. I have no doubt.

Mr. **Bafalis**. I think the other thing we find on this committee, as you know, is that if there is a strong feeling against the process for certifying H-2 workers, it is not in this committee's jurisdiction. It is within the jurisdiction of the committee you were before earlier this month.

If there is a problem in letting people slip through, it is a problem of the Department of Labor. As I told Mr. Lewis this morning, if you are not doing your job, then don't think that by putting a Band-Aid on in the way of collecting unemployment compensation from some employer is going to stop the H-2 problem. It is not.

If you need *x* number of workers to harvest your crop, you are going to have to get them regardless of what the cost is. If you have got to go overseas to do it, you have to do it.

The only thing this is doing is just saying we are going to collect money from people who never can benefit by the collection. It is just one more way of hitting somebody over the head. It really doesn't accomplish anything.

There usually has to be some reason for what we are doing. I really don't believe that you are going to hire one additional American worker if we do away with this exemption.

That is all I have to say, Mr. Chairman.

Chairman FORD. Thank you very much, Mr. Semler.

Do you have any response you would like to make to Mr. Bafalis?

Mr. SEMLER. Obviously I disagree quite strongly.

I believe sugarcane is obviously a much more difficult picking job than apples, but the question remains the same, at what wage you can get people to do that.

I think the problem with the system is that there has never been any requirement by the growers to show that they could not pay the wage necessary.

It might be $10; it might be $15.

Maybe in fact the sugar growers could not pay that. But there has never been any requirement anywhere that they show that. So that we have these repeated assertions, but there is nothing in the record, no requirement as part of the process that this be shown.

Chairman FORD. Thank you for your testimony.

The committee will now hear from Mr. Max J. Beilke, the legislative counsel for the National Association for Uniformed Services; Mr. Richard W. Johnson, Jr., national director for legislation for the Non-Commissioned Officers Association of the U.S.A.; Mr. Donald H. Schwab, director of the National Legislative Service of the Veterans of Foreign Wars of the United States; and Mr. Robert W. Nolan, national executive secretary for the Fleet Reserve Association.

Mr. Beilke, the Chair will recognize you at this time.

STATEMENT OF RICHARD W. JOHNSON, JR., NATIONAL DIRECTOR OF LEGISLATION, NON-COMMISSIONED OFFICERS ASSOCIATION OF THE U.S.A.

Mr. JOHNSON. I will speak for Mr. Beilke. Mr. Beilke is not here today.

Chairman FORD. Your name, sir?

Mr. JOHNSON. I am Richard Johnson.

NCOA represents more than 250,000 noncommissioned and petty officers, 83 percent of whom are on active duty in the Armed Forces.

Additionally I represent the congressionally chartered Marine Corps League of the United States which has endorsed my prepared statements; also the remarks I will make today.

Finally, Mr. Max Beilke, National Association for Uniformed Services, who was scheduled to testify today, asked me to extend his regrets to the committee.

NAUS has submitted a statement for the record and has asked me to represent them in this presentation.

So I am wearing several hats today. It is not a comfortable situation.

The associations that I represent are rather collectively appalled at the situation caused by the passage of the Budget Reconciliation Act.

We have in fact——

Chairman FORD. Excuse me, Mr. Johnson. We do have a copy of Mr. Beilke's statement and will make his statement a part of the record as well.

[The prepared statement follows:]

STATEMENT OF MAX J. BEILKE, LEGISLATIVE COUNSEL, THE NATIONAL ASSOCIATION FOR UNIFORMED SERVICES

Mr. Chairman, and members of the subcommittee, I welcome the opportunity to present the views of the National Association for Uniformed Services to this distinguished panel.

The National Association for Uniformed Services (NAUS) is unique in that our membership represents all ranks of career and non-career service personnel and their wives and widows. Our membership includes active, retired, and reserve personnel of all seven uniformed services: Army, Navy, Air Force, Marines, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration. With such a membership, we are able to draw information from a broad base for our legislative activities.

On November 1, 1979 NAUS testified before this panel in support of HR 5533, to deny unemployment compensation benefits to certain servicemen who were released from duty for the good of the service. At the time, NAUS also supported increasing the 90 day military service eligibility requirement for unemployment compensation. On September 26, 1980 Public Law 96-364 did replace the 90 day with a 365 day requirement. NAUS appreciates the efforts of this subcommittee in making that change.

More recently on March 11, 1981 NAUS appeared before this subcommittee in opposition to a proposal to eliminate unemployment compensation for those individuals who do not reenlist.

This review is only to remind this distinguished panel that NAUS has long been interested in unemployment compensation as it pertains to our military forces.

Today, NAUS wishes to express its opposition to Section 2405, of the Omnibus Reconciliation Act of 1981, Public Law 97-35 which denies unemployment compensation benefits for ex-servicemen who had the opportunity to reenlist. NAUS interprets this denial as an economic penalty for not reenlisting.

Enlistment contracts are for a specified number of years. Renewal of these contracts is at the option of the government and the individual concerned. There should be no penalty assessed either party if renewal is not consumated. The problem of retention in our military forces will not be resolved by attempting to hold our enlisted people hostage by denial of unemployment compensation

Not everyone is suited for a military career. The military establishment does not expect nor desire it. If everyone who enlisted remained for 20 years or more there would be serious in-service promotion and assignment problems. Additionally, retired pay costs would skyrocket. If only those set on a minimum of 20 years service actually enlisted, our force structure would consist of a lot of supervisors and few workers. How many people take their first job with the idea of staying with their original employer for 20 years? For a majority of enlistees, the service is their first real work commitment.

The armed services need a large number of young men and women to enter the service, spend three or four years and then return to civilian life. We should thank those who give these years in service to their country, not punish them. Upon release from active duty, few remain in the proximity of their last duty station. Most return to their place of first enlistment, which is generally where they were born and raised. Because these individuals do not remain near their last duty station it is often impossible for them to seek employment prior to discharge. It is extremely difficult to job hunt in Madison, Wisconsin while stationed at Fort Hood, Texas. The Hawaiian or Alaskan resident has an even greater problem if their last duty station is within these contiguous United States. Many young servicemen and women spend their last service days overseas, and are returned to this country only for outprocessing and discharge. Should these individuals be penalized when they were never afforded the opportunity to seek new employment?

Private sector employees generally have the opportunity to seek a new employer before voluntarily leaving their current employer. Few employees leave an employer without having already secured other employment. Even fewer who do leave a job voluntarily, leave the immediate locale where last employed. This is certainly not true of our service personnel.

Spouses of military personnel are denied unemployment compensation when they leave their job voluntarily to follow their military spouse because of transfer orders or upon discharge from the service. In these cases, both members of the family are denied an interim source of income pending acceptance of new employment. Denial of benefits to the servicemember in this instance creates a double hardship.

Today's All-Volunteer force has more single parent families than ever before. The Army has more than 20,000 single soldiers with children. Leaving the services without some form of unemployment compensation while they seek new employment will be economic disaster for some.

NAUS is fully cognizant that there are those who favor the denial of unemployment compensation to ex-service personnel. They base their argument on the premise that since states either disqualify or reduce the amount of the benefit to private employees who leave their job voluntarily, the service person refusing reenlistment offers are thereby quitting the service voluntarily and should therefore be denied like benefits. If this premise is allowed to stand, then it's fair to carry it one step further. It is true, all service personnel qualified for enlistment are offered the opportunity to reenlist. By the same token, the military service also offers to all qualified citizens the opportunity to enlist. For qualified individuals the opportunity to enlist or reenlist is offered to qualified personnel indiscriminately. Therefore why not deny unemployment compensation to qualified personnel who do not enlist?

Public Law 94-566 decreed that individuals receiving a government or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on previous work shall have their unemployment compensation reduced on a dollar for dollar basis by the amount of such pension, retirement, or retired pay, annuity or other similar payment.

Public Law 96-364 changed that decree in that it specified that such pensions or retirement benefits were under a plan maintained or contributed to by a base period employer or chargeable employer. Public Law 96-364 further amended the effective date of this provision to apply to certifications of states for 1981 and subsequent years.

Information available to NAUS indicates there are 14 states which offset unemployment compensation by the amount of military retired pay even though the military was not the individual's base employer. This in essence reduces unemployment compensation for a retiree even though the retiree may have worked for an employer who was required to pay the full unemployment compensation tax. This is unfair for two basic reasons. The military retiree suffers a reduction or total loss in unemployment compensation benefits regardless of the number of years worked for an employer after leaving the military. Second, the employer is required to pay the unemployment compensation tax even though the military retiree will never be able to receive unemployment compensation or will receive only a small portion of it.

NAUS supports the elimination of denying or reducing unemployment compensation due to receipt of military retired pay when the military is not the base employer.

I would also like to bring to your attention that some states treat military disability retired pay and Veterans Administration's disability compensation differently in that they reduce unemployment compensation for receipt of one but not the other. When an individual becomes disabled while on active duty and with less than 20 years service, that individual has the option of selecting disability retired pay or VA compensation. They cannot receive both.

Recently a case in California was brought to my attention where a WW II disabled veteran was denied unemployment compensation because he was in receipt of disability retired pay. This individual was drafted in March 1943 and injured in October 1944 while on a flying mission in New Guinea. From October 1944 until July 1947, when eventually discharged, this individual was hospitalized. Now in 1980 he was denied unemployment compensation because he is in receipt of military disability retired pay. Had he been in receipt of VA compensation, receipt of unemployment benefits would have been assured. Remember, the nature of the injury is not the determining factor between disability retired pay and veteran's disability compensation. This means two individuals with identical injuries, but receiving compensation from different sources would be treated differently when applying for unemployment compensation.

The National Commission on Unemployment Compensation recommended in 1980 that the Federal Unemployment Tax Act requiring states to reduce benefits by amount of any pension payment be repealed. NAUS concurs in that recommendation. NAUS also urges the repeal of that portion of Public Law 97-35, the Omnibus Reconciliation Budget Act of 1981 that prohibits unemployment compensation for those enlisted members of the military, who though fully qualified for reenlistment, do not reenlist.

At this time I am prepared to respond to any questions you may have.

Mr. JOHNSON. Thank you.

We have a situation now as a result of the Budget Reconciliation Act that deprives those people who voluntarily serve in the Armed Forces of this country unemployment compensation upon discharge. There has been a great deal of talk this morning about the problem that individual has as to where he is going to live when he is discharged.

There has been discussion this morning on cancellation of wage credits, which is a very valid point. The only other place we suggest cancellation of wage credits is to those people who have committed fraud or were severed for gross misconduct from their last employment.

We have in fact a situation where we are allowing persons who are separated under honorable conditions, but for perhaps less than fully honorable reasons from the Armed Forces, able now to receive unemployment compensation where the individual who came and did his all for the service is no longer eligible.

Mr. Chairman, all three associations support Mr. Mitchell's bill, H.R. 4433, to repeal that portion of the Budget Reconciliation Act that pertains to this situation.

We hope the committee will forward that to the full committee and to the floor and to the other body for consideration.

The other thing that we would like to address today is the military retiree's position on unemployment upon separation from the Armed Services.

We have here a very unusual individual, generally a young man forced by age to leave the Armed Forces. We cannot have an old Armed Force.

We can't put 50-year old men in the field. They can't do the job. We don't want them to do the job. So we force a man at the age of 40 into finding a second career.

We force him to do that at a point in time where he has a number of dependents, where he has incredible financial responsibilities, and through a succession of laws we have deprived him of a sustaining income or a partially sustaining income during that period.

We ask today that the committee strongly consider eliminating military retirees' pay from consideration and unemployment offset. We have a force that depends on volunteers now. We have a force that depends on youth to be effective.

We have a commitment to the military retiree to provide for his interest, particularly where we are putting him back into a job market where statistically he is not going to earn what his counterparts will earn in later life, and where he will not receive a substantial income replacement from the military retired pay benefits that he does draw.

So we ask that exemption. That, Mr. Chairman, concludes my statement. I had only those two points to make on unemployment compensation for recently discharged veterans, the second one on military retirees.

Thank you for this opportunity to appear.

[The prepared statement follows:]

STATEMENT OF RICHARD W. JOHNSON, JR., NATIONAL DIRECTOR OF LEGISLATION, THE NON-COMMISSIONED OFFICERS ASSOCIATION OF THE UNITED STATES OF AMERICA

Mr. Chairman, the Non-Commissioned Officers Association of the USA (NCOA) is a 250,000-plus member organization representing noncommissioned and petty officers of the U.S. Armed Forces; on active duty, retired, in the reserve or national guard, or in a veterans status. Eighty-three percent of the membership is on active duty with the Army, Navy, Marine Corps, Air Force and Coast Guard. Their concern for the inequitable statutes governing eligibility for the receipt of unemployment compensation benefits brings me here today.

I am Richard W. Johnson, Jr., National Director of Legislation for the largest military enlisted association in the United States. I formerly served in the armed forces as a noncommissioned officer. On behalf of the Association's directors, officers and members, I extend appreciation for this opportunity to present its views on the denial of benefits for ex-servicemen who had the opportunity to reenlist and on the reduction of compensation by the amount of retired pay for military retirees.

I might add here the Association representatives have previously appeared before this subcommittee on the two issues covered in my statement today.

DENIAL OF BENEFITS TO CERTAIN EX-SERVICE MEMBERS

During the 96th Congress, a NCOA spokesman came before this panel recommending that the period of military service for eligibility for unemployment compensation for ex-servicemembers (UCX) be extended to 12 months. The panel also recommended one year and the law was subsequently amended (Section 1002 of Public Law 96–342) to read as such.

At the beginning of the 97th Congress, I appeared before the subcommittee opposed to the current Administration's proposal to deny ex-service members compensation benefits if they were recommended for reenlistment but chose not to remain in the service. I suggested that it should be the other way—deny benefits to those who fail to complete their terms of enlistment or agreement and who were not recommended for reenlistment.

The subcommittee adopted a compromise position which, under the circumstances, was acceptable to the Association; however, it was overturned by the passage of the Gramm-Latta amendment to the Omnibus Budget Reconciliation Act of 1981.

The new requirements, effective July 1, 1981, provide that servicemembers must meet the following requirements in order to be eligible for UCX benefits: (1) must have been discharged or released under honoracle conditions, (2) did not resign or voluntarily leave the service, and (3) was not released or discharged for cause as defined by the Department of Defense.

On first appearance, the new statute seems to cover all but a few servicemembers, but it does not. According to a Department of Labor spokesman whose job is to determine who is or is not eligible, the language is confusing and ambiguous and may allow benefits to be paid to certain servicemembers who receive general discharges under honorable conditions (i.e.—for lack of motivation, pregnancy, homosexual tendencies, etc.) regardless of any interpretation for cause by the Defense Department. Also those who receive honorable discharges but not authorized to reenlist may be eligible. According to an Unemployment Insurance Memorandum dated August 28, 1981; "a claimant will not be considered to have voluntarily left the service if the claimant was released or discharged upon completion of term of service and either could not, or would not have been permitted to reenlist for another term og service." In a recent news article, it was reported that Labor officials were concerned that the government could be sued successfully by this group and win benefits if the Department denied their claims. Additionally, Defense Department attorneys agree that the Senate intended in its debate that this group be eligible for UCX.

The key to denial of benefits lies within the first two requirements. If 1980 figures are a guide to what can be expected for the last six months of 1981, some 90 percent of all first term servicemembers nearing discharge will be recommended for reenlistment and automatically disqualified. Nearly 10 percent of this group will not be recommended for reenlistment while some 25-to-30 percent of all first term enlistees will fail to complete their enlistment contracts or terms of agreement.

Frankly, the new statute penalizes the servicemember who completes his or her contract with the military, but finds the Service incompatible with plans for the future. There is not only a penalty inflicted, but it reeks to high heaven as a form of compulsory military service, or an economic draft, if you please—an issue to which the current Administration has adamantly voiced its opposition.

When the Reagan Administration originally proposed the amendment, it did so claiming it would boost sagging retention rates. However, there was no existing problem with first and second term reenlistments. Each of the services was meeting and exceeding its goal. The major area of concern was with 12-to-13 years and subsequent years of service personnel who were leaving the military in droves because of higher wages in the civilian sector. Most had employment in private enterprise prior to departure from the Services and were not applying for UCX benefits.

Even if there had been unacceptable rates in first and second term reenlistments, the military cannot accommodate more than 50-to-60 percent of the eligible reenlistees. If the Services permit 100 percent reenlistments, the force would become stagnant in its promotion opportunities and the average age of its personnel would significantly increase. Both would defeat the aims of the Defense establishment: (1) more people would leave the military because they could not get promoted or change occupational specialties, and (2) a young, mobile and active force would become older, less responsive and more prone to indifference. Morale would suffer immeasurably.

On top of this, retirement costs would soar beyond fiscal responsibility. If a servicemember stays for the third reenlistment period, he or she is more prone to remain in the service to eventually retire. It is far less costly to provide limited UCX benefits than pay out retirement payments for the remaining lifetime of the affected servicemember.

Recently, NCOA wrote President Reagan seeking relief legislation that would correct the ambiguous and inequitable requirements imposed by the Omnibus Budget Reconciliation Act. The Association wrote of the large number of complaints it was receiving from military personnel in all grades, many not affected by the new statute. It also covered some of the arguments contained in this statement and suggested the denial of UCX benefits would adversely affect future enlistments and reenlistments in the U.S. armed forces. The reply received from the Department of Labor was as frustrating as the current law and as noncommital as the bureaucracy can get in its dealing with a public entity.

The response, however, did echo the Senate position. It claimed that the President's reason for amending the statute was "to establish requirements for servicemembers that are more comparable to those which apply to civilian workers."

This is a ridiculous charge. If anything the new statute widens the gap between the servicemember and his or her civilian counterpart. Civilian workers who are employed under contract may be eligible fpr benefits whenever that agreement expires. This is particularly true if the civilian enters into a contract that is similar to the one that is given to enlisted military personnel.

There is a vast difference, however, in a civilian contract and a military contract. The civilian agreeing to a contract of employment normally does so after the contracting firm puts in writing the terms of employment. They include, but may not be limited to, compensation, benefits, promotion opportunities, location of employment, severance payments and bonuses. On the other hand, the enlisted servicemember signs a one-sided agreement that promises little if anything. The member agrees to serve honestly and faithfully for a term of years while the military (contractor) guarantees no tenure of service for the period covered, no compensation, no set promotion policy, no particular benefits and no pension plan—not even severance pay if the individual leaves the military service between the time of entry and qualifying for retirement pay 20 years later.

What civilian would agree to such a contract? If he or she did so, how many states would deny him or her unemployment benefits when such a contract terminates and is brought to their attention? Yet, the current law denies the servicemember UCX benefits because he or she doesn't care to renew a contract that is strictly one bordering on bondage.

Furthermore, military personnel—for the most—enter tie Services at a younger age than their civilian counterparts begin working in the private sector. They serve their country, work longer hours at lower wages and—for the majority—are removed far from their homes during military service. When it comes near to the time for discharge or release, they are still miles from the hometown, many having just returned from overseas or serving aboard ship, and are unable to search for employment prior to returning home. They are certainly not able to go into a State Employment office in, say, Virginia expecting that commonwealth to locate a job for them in Taylor, Michigan. So they now come home without severance or rehabilitation pay, without a job and without UCX benefits. As Congressman Richard White of Texas remarked in introducing his legislation, H.R. 4573, the new statute "serves to impede rather than assist the readjustment process from military to the civilian sector."

Mr. Chairman, this is a cheap and cruel way to thank our service men and women for serving in an all volunteer force—a force, I might add, that is endorsed by this Congress. The Association urges the subcommittee to recommend repeal of Section 2405 of Public Law 97-35, not only because of its ambiguity and perniciousness but because it is contrary to the best interest of national defense.

If there is a need for a recommendation to replace the current language; NCOA suggests that only those ex-service members who complete their contracts or agreements and are recommended for reenlistment be granted UCX benefits.

REDUCTION OF COMPENSATION BY THE AMOUNT OF PENSION OR RETIRED PAY

More than 2 years ago, a representative of NCOA appeared before this subcommittee seeking relief for military retirees that would be affected by Section 314, Public Law 94-566 as amended by Public Law 95-19. In essence, the statute allowed the reduction of unemployment compensation by the amount of the former servicemember's retired pay.

Subsequently, Section 414 of Public Law 96-364 tempered the language of the original act by allowing the military retiree to become eligible for compensation if having been employed in his or her post-retirement period and in receipt of wages from other than the base-employer, in this case the federal government.

The Association finds no fault with the generous language of the preceding amendment; however, it believes that subparagraph (15) to Section 314, Public Law 94-566, is unfair and prejudicial in its treatment of military retirees.

In reviewing the legislative history of Public Law 94-566, it was apparent there were several reasons why the law was enacted. First, unemployment benefits are intended to provide temporary income replacement to persons who unexpectedly and involuntarily lose their employment status and are not intended to supplement the income of retirees. Secondly, many recipients of unemployment compensation lose little income when they become unemployed. And third, this group of recipients—particularly those drawing pensions or retired pay—is more likely to be unemployed longer although jobs similar to their last one are often available, and are more prone than any other group to exhaust their compensation benefits.

Although the Association might have some difficulty in arguing in favor of the civilian retiree relative to the reasons noted, it finds it quite simple to speak out in behalf of the military retiree. The military retiree is unique among all other retirees in the civilian community with few exceptions (i.e.—former policemen, firemen or others dealing in hazardous duties). They are retired from the military service, some voluntarily but most because of stress, disability, lack of promotion opportunities, frequent transfers, family problems or needs, time in service, or even age. In any event, they are much younger than their civilian counterparts—a few at age 37, but most at the 41-to-45 year level.

The majority have growing families with dependent children yet in school and relocate to other than their last place of duty to find employment, establish a new home, enroll the children in school and, thus, have a need for an equal or greater income than earned on active duty.

In testimony before this subcommittee on Nov. 1, 1979, the then Deputy Assistant Secretary for the Employment and Training Administration, U.S. Department of Labor, conceded that military personnel are unique and military duty "is in many ways different from civilian employment." He advised the panel that: "(A) military enlistment does not permit a search for civilian employment in the civilian sector; the work products and objectives are different as are the processes by which military service and civilian employment may terminate." He went on to say that a servicemember is not free any time to accept a job because he or she is bound by a term of enlistment. Under the current statute, the military retiree may be forced to use earned leave time to seek employment prior to the effective date of his or her retirement—that is, if the prospective retiree has any unused leave credited to his or her account.

This is really unfair to the military retiree because his or her civilian counterpart may seek other employment without using vacation time. As noted in the first part of this statement, servicemembers are not able to seek employment in a State other than the one they are currently serving in on active duty.

Once the servicemember retires, his or her pay is reduced to less than 40 percent of the amount received while on active duty. Civilian retirees have their pensions or annuities based on their full salaries while military retired pay is computed on the member's base pay which is only a part of total compensation received while in the service.

If the military retiree's spouse is employed the relocation forces her or him to quit and constitutes a greater loss of income and almost automatically disqualifies the spouse for unemployment compensation. Civilian retirees whose spouses are working are not so dramatically cut short of income and may continue to live a normal life without the prospect of relocating to find other employment.

Probably the biggest differences between the military and civilian retiree are (1)—the latter really retires while the former servicemember must find employment to augment the family's reduced income, and (2)—the move from the military service into the civilian work world can be and often is a traumatic experience.

It is well to note here that the final two reasons were amplified by the General Accounting Office in its report "Unemployment Insurance—Inequities and Work Disincentives in the Current System." It based its recommendations to deny compensation to retirees on a sample of 3,000 recipients, none of which, I might add, were in receipt of military retired pay. GAO, however, did acknowledge that less than 17 percent of the recipients were receiving less than 40 percent of their previous net income. The average was 64 percent of net income, some 28 percent or more than the average military retiree was receiving in retired pay.

In other arguments designed to support the dollar-for-dollar offset of unemployment compensation by retired pay, the following issues were discussed. Each are addressed as to their relationship to military retired pay.

a. Increased taxes minimize lost income.—Increases in income taxes over the past 40 years have widened the gap between gross and net income. Therefore, most retirees now replace at least 60 percent of their prior *net* wages during unemployment.

Comment.—Military retired pay is subject to taxation which is automatically withheld by the military services. Also, insurance and survivors benefit plan allotments are deducted from the former servicemember's retired pay. As noted earlier, net income, therefore, is far below the 60 percent replacement factor.

b. Retirement income minimizes lost income.—This income, combined with UC, minimizes recipient's financial need to seek employment.

Comment.—Because of the unique status of the military retiree, he or she is in need of employment and will make every effort to locate a job as soon as possible. Military retirees are industrious and at age 41-to-45 are not content to stay idle. Unemployment compensation is used principally to augment income while seeking employment.

c. The absence of work-related expenses increases the value of unemployment compensation.—During unemployment, most people no longer pay child care and other work-related expenses. As a result, UC dollars are of greater value than the same dollars in wages.

Comment.—Military retirees have families. They continue to incur as many if not more work-related expenses in seeking employment than they had in the service. Most are making a new home at a new location.

d. Many UC recipients have spouses who work.—(Self-explanatory.)

Comment.—The working spouses of military retirees give up their jobs to relocate. They are denied UC benefits, as are their spouses, and total net income can be further reduced by their job loss.

In another report from the National Commission on Unemployment Compensation, the commissioners recommended the establishment of a minimum benefit standard of not less than 66⅔ percent of average total weekly wages up to a maximum of 75 percent of the statewide average wage. These amounts would prevent major deterioration of both present and future living standards for many workers. The Association, whether or not it agrees with the amount, believes it is indicative of the needs of the average unemployed worker. However, the amount dramatically illustrates the plight of the average military retiree who receives far less in retired pay than is required to prevent major deterioration of his or her family living standards, now or in the future.

In conclusion, the Association believes the current law should be amended to delete military retired pay.

Chairman **Ford**. Thank you very much, Mr. Johnson.

Mr. Nolan.

STATEMENT OF ROBERT W. NOLAN, NATIONAL EXECUTIVE SECRETARY, FLEET RESERVE ASSOCIATION

Mr. **Nolan**. Mr. Chairman, I am Robert W. Nolan, national executive secretary of FRA. We are a service organization comprised of 150,088 enlisted personnel active duty and retired, of the U.S. Navy, Marine Corps, and Coast Guard.

As a retired Navy chief petty officer, it is my privilege to present their views on the inequitable provision of current law that prohibits former service personnel who are eligible for reenlistment from receiving unemployment benefits after their separation from active duty.

We appreciate that at first glance such ex-service personnel appear to be the same as a civilian worker who chooses to quit his current employer and seek employment elsewhere, but upon a closer examination of facts it is immediately recognizable that the circumstances and conditions of employment are entirely different.

The following facts must be considered carefully in the equitable resolution of this:

One: The service person enters into a contract with tie employer, the U.S. Government, and does not have the option of quitting to seek employment elsewhere prior to the expiration of enlistment.

Two: While serving on active duty, he cannot effectively seek employment ahead of discharge.

Three: His decision not to re-enlist may actually be a quasi-voluntary decision. For example, if he reenlists, he may well be facing reassignment or sea duty entailing extended separation from his family.

Four: It is unlikely that he will be discharged at his home of record, therefore he cannot seek employment until he relocates.

Five: His relocation process requires the transportation of home and family, therefore his change of employment is not the usual easy change of jobs.

Six: Oftentimes the job skill he held in the military is not directly transferable to a civilian job or he may wish to pursue a new field of employment.

Seven: The current provision of law is most certainly discriminatory against the service person who enlists and completes the obligations of the enlistment contract in a highly satisfactory manner when it is compared to the fact that:

Military personnel who do not complete their enlistments and are not eligible for reenlistment will receive unemployment compensation;

A civilian employee who fulfills a contract with a civilian firm or the Federal Government and does not wish to renew the contract will receive unemployment compensation and

A civilian employee whose employer requires him to relocate to another location, but he refuses to relocate, will receive unemployment compensation.

Therefore, we believe we have clearly demonstrated that the circumstances and conditions of employment between the normal employee and the service member at the time of the expiration of his enlistment are entirely different and should be handled differently.

The philosophy that current law will assist retention of military personnel is specious at best.

In fact, it could produce just the opposite effect, encouraging some personnel to seek release from military service prior to the satisfactory completion of their enlistment so that they will qualify for unemployment benefits.

In view of the facts we have presented here today, it is only equitable to repeal the provision contained in section 2405 of the Omnibus Budget Reconciliation Act of 1981 by the passage of H.R. 4433 proposed by U.S. Representative Donald Mitchell of New York to assure that persons who serve their Nation honorably and complete their enlistments satisfactorily have the same opportunity to enter the civilian work force as their contemporaries who served less satisfactorily.

Mr. Chairman, this concludes our statement and we stand ready to answer questions.

Chairman FORD. Thank you very much, Mr. Nolan.

[The prepared statement follows:]

STATEMENT OF ROBERT W. NOLAN, NATIONAL EXECUTIVE SECRETARY, FLEET RESERVE ASSOCIATION

INTRODUCTION

Mr. Chairman and members of this distinguished Committee, I am Robert W. Nolan, National Executive Secretary of the Fleet Reserve Association (FRA). The FRA is a service organization comprised of 150,088 enlisted personnel, active duty and retired, of the U.S. Navy, Marine Corps and Coast Guard. As a retired Navy Chief Petty Officer, it is my privilege to present their views on the inequitable provision of current law that prohibits former service personnel who were eligible for reenlistment from receiving unemployment benefits after their separation from active duty.

PRESENTATION

It is the FRA's position that Section 2405 of the Omnibus Budget Reconciliation Act of 1981 disqualifying for unemployment compensation benefits anyone who leaves the military service at the end of an enlistment if he or she is eligible to reenlist is patently inequitable. We appreciate that at first glance such ex-service personnel appear to be the same as a civilian worker who chooses to quit his current employer and seek employment elsewhere. But upon a closer examination of the facts it is immediately recognizeable that the circumstances and conditions of employment are entirely different. The following points must be considered carefully in the equitable resolution of this inequity:

1. The service person enters into a contract with the employer, the United States Government, and does not have the option of quitting to seek employment elsewhere prior to the expiration of enlistment.

2. While servicing on active duty, he cannot effectively seek employment ahead of discharge.

3. His decision not to reenlist may actually be a quasi-voluntary decision. For example, if he reenlists, he may well be facing reassignment or sea duty entailing extended separation from his family.

4. It is unlikely that he will be discharged at his home of record therefore, he cannot seek employment until he relocates.

5. His relocation process requires the transportation of home and family therefore, his change of employment is not the usual easy change of jobs.

6. Often times the job skill he held in the military is not directly transferable to a civilian job or he may wish to pursue a new filed of employment.

7. The current provision of law is most certainly discriminatory against the service person who enlists and completes the obligations of the enlistment contract in a highly satisfactory manner when it is compared to the fact that:

(a) military personnel who do not complete their enlistments and are not eligible for reenlistment will receive unemployment compensation;

(b) a civilian employee who fulfills a contract with a civilian firm or the federal government and does not wish to renew the contract will receive unemployment compensation; and

(c) a civilian employee whose employer requires him to relocate to another location, but he refuses to relocate, will receive unemployment compensation.

Therefore, we believe we have clearly demonstrated that the circumstances and conditions of employment between the normal employee and the service member at the time of the expiration of his enlistment are entirely different and should be handled differently.

The philosophy that current law will assist retention of military personnel is specious at best. In fact, it could produce just the opposite effect, encouraging some personnel to seek release from military service prior to the satisfactory completion of their enlistment so that they will qualify for unemployment benefits.

CONCLUSION

In view of the facts we have presented here today, it is only equitable to repeal the provision contained in Section 2405 of the Omnibus Budget Reconciliation Act of 1981 by the passage of H.R. 4433 proposed by U.S. Representative Donald Mitchell of New York to assure that persons who serve their nation honorably and complete their enlistments satisfactorily have the same opportunity to enter the civilian workforce as their contemporaries who served less satisfactorily.

Mr. Chairman, this concludes our statement and we stand ready to answer questions. On behalf of my 150,088 Shipmates and their families, I sincerely thank you for giving us the opportunity to present our views today.

Chairman **Ford**. Mr. Schwab.

STATEMENT OF DONALD H. SCHWAB, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. **Schwab**. Thank you, Mr. Chairman.

My name is Donald H. Schwab and it is my privilege to serve the more than 1.9 million men and women of the Veterans of Foreign Wars as their national legislative director.

Mr. Chairman, section 2405 of title XXIV of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, denies unemployment compensation to those prior service personnel who resign or voluntarily leave the Armed Forces or who are released or discharged for cause as defined by the Department of Defense.

Although we have no quarrel, Mr. Chairman, with those who are truly separated for cause being denied unemployment compensation, we believe that those who completed their enlistments, fulfilled their written contract with the Government and decided not to make the Armed Forces a career should be entitled to unemployment compensation, as should those unfortunate men and women who do not have the mental or physical capacity to stay in the Armed Forces, who are separated for cause and thus denied unemployment compensation.

Even the apparent fair treatment for those separated for physical disability to be entitled to unemployment compensation masks the very real possibility of a Catch-22 situation for them. The test for separation for disability from the Armed Forces is that the member is unfit to perform the duties of his or her rank, grade, or office.

In all States the initial qualification for unemployment compensation is that the person be able and available for work.

So, even those separated for disability under the current law, aren't necessarily entitled to unemployment compensation.

As written, we believe the law is ambiguous, nebulous and unworkable with any degree of evenhandedness.

As a result, we support H.R. 4433 introduced by Mr. Mitchell, which would repeal that portion of the Budget Reconciliation Act, and restore the prior language of 5 U.S.C. 8521(a)(1)(B).

Two other bills pending which would ameliorate the situation were introduced by the Hon. Richard White and the Hon. Thomas Tauke. Although we support the first two provisions of both these bills, we oppose the third and fourth provisions.

The third provision would delay payment for 5 weeks for unemployment compensation for prior service personnel.

This is not generally imposed on those in the civilian sector.

The fourth provision of both these bills would restrict unemployment compensation to 13 weeks and we consider this as unconscionable.

Nearly all States grant others 26 weeks unemployment compensation; the District of Columbia, 34 weeks, and two States, 36 weeks.

So these bills wouldn't really placate our veterans or assuage their anger towards the Government that they served with honor, which they now feel very deeply.

Mr. Chairman, another area that continues to bring complaints is the offset of unemployment compensation by retired pay for those who have retired from the Armed Forces.

I would point out to you that contrary to what many people believe, all separations, retirements from the Armed Forces, are not voluntary.

As far as the Officer Corps is concerned, there are statutory length of service ingrade stipulations, and for enlisted personnel they must often fight to stay on active duty after 20 years of service.

So, many Armed Forces retirees whose retirements read voluntarily are not necessarily voluntary.

In fact, when I was on active duty and we would cite an officer for mandatory retirement, in the same letter we would give the option of submitting his or her voluntary retirement, which most of them did.

So once retired, the job search can be long, it can be disheartening, it can be financially devastating.

There are a number of bills which would rectify this situation. H.R. 1195, 1492, 1495, 1885, 1970, 2808, and 3486, and we support passage of these bills.

In conclusion, Mr. Chairman, I would suggest to you that this Congress of the United States has to cease eliminating benefits if we are to maintain a voluntary military establishment of high caliber and esprit de corps to assure the continued freedom of this Nation.

I think that is what it is all about.

I will be happy to respond to any questions you may have.

Chairman FORD. Thank you, Mr. Schwab.

[The prepared statement follows:]

DONALD H. SCHWAB, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. Chairman and members of the subcommittee: Thank you for the privilege of appearing before this distinguished Subcommittee to present the views of the Veterans of Foreign Wars of the United States.

My name is Donald H. Schwab and it is my privilege to serve the more than 1.9 million men and women of the Veterans of Foreign Wars as their National Legislative Director.

Mr. Chairman, section 2405 of Title XXIV of the "Omnibus Budget Reconciliation Act of 1981," Public Law 97-35, denies unemployment compensation to those prior service personnel who resign or voluntarily leave the Armed Forces or who are released or discharged for cause as defined by the Department of Defense.

It is a matter of record that on the 11th of March of this year, I testified before this very Subcommittee in opposition to the Administration's proposal to deny unemployment compensation to former Armed Forces personnel who complete their enlistment contract and are eligible to reenlist, but elect to return to civilian life. The cited restriction of Public Law 97-35 constitutes a gross inequity imposed upon those men and women who served with honor and fulfilled their contractual obligation with the Armed Forces. During the hearing both the Secretary of Labor, the Honorable Raymond J. Donovan, and the then Acting Deputy Assistant Secretary for Employment and Training, Lawrence E. Weatherford, supported this disservice to veterans. To quote Mr. Weatherford in part: ". . . we are proposing a change which has to do with the separation of servicemen and women from the service, that would require an individual, who is in the service now and voluntarily leaves the service and does not accept reenlistment when there is an opportunity to do so, be treated as people in the private sector. This means that they would be refusing a job or work that is available to them." To me, this is not an accurate statement. These honorably discharged veterans have not refused work available to them, but rather, fulfilled their contract and should be entitled to unemployment compensation just as are those in the private sector who fulfill a work contract. Following Mr. Weatherford's comments, the former Chairman of this Subcommittee, the Honorable Fortney H. (Pete) Stark, attempted to put this matter in the proper perspective by saying: "I have concerns as I indicated earlier, with eliminating unemployment compensation on ex-service members . . . there is, at the completion of an enlistment a presumption that the member of the military has served us patriotically, honorably, and maybe at risk of his or her life or limb. So it isn't as if you have finished a four-year or two-year or six-year enlistment and you are somehow bad for not going back and reenlisting. You have done your service to the country, you have fulfilled a contract that you have pledged to do."

As previous stated, Mr. Chairman, the present law as enunciated in Public Law 97-35 is patently unfair to those veterans who honorably fulfilled their contract with the Armed Forces. In addition, the provision denying this benefit to those released or discharged for cause as defined by the Department of Defense is ambiguous, nebulous, and unworkable with any degree of evenhandedness. Confusion even exists within the Department of Defense since reportedly only those leaving service because of disability or reduction in force would be eligible for unemployment compensation while those honorably discharged for unsuitability or failure to be promoted for example would be denied. This would mean that those unfortunate men and women who gave their unsatisfactory best and just did not have the mental or physical ability to perform properly and thus separated "for cause" would be denied unemployment compensation. Again, the sergeant who performs well at that level and fails promotion to the next higher grade would be separated "for cause" and denied unemployment compensation. Even the apparent fair treatment of those separated for physical disability masks the very real possibility of a "Catch-22" situation which could deny them unemployment compensation. The test for disability separation from the Armed Forces is that the member be found unfit to perform the duties of his or her rank, grade, or office. On the other hand, the laws of every state require that to qualify for unemployment compensation, the applicant must be able and available for work. Therefore, and contrary to the intent of current law, separation for disability does not, in fact, assure the veteran entitlement to unemployment compensation.

Mr. Chairman, the voting delegates to our 82nd National Convention held in Philadelphia, Pennsylvania, this past August, passed Resolution No. 681 entitled "Unemployment Compensation for Recently Discharged Veterans," a copy of which is appended to my testimony. In substance, the resolution calls for the repeal of section 2405 of Public Law 97-35. H.R. 4433 introduced by the Honorable Donald J. Mitchell now pending before this Subcommittee would do just that and, also, restore the prior language of 5 USC 8521 (a)(1)(B) which authorized unemployment compensation to those Armed Forces personnel discharged or released under conditions other than dishonorable and were not given a bad conduct discharge, or, if an officer, did not resign for the good of the service. H.R. 4433 is the bill the VFW supports since it is the only one that would eradicate the present unfair and reprehensible treatment of the one group who have done something for our great nation—veterans.

Mr. Chairman, two other bills are pending which would: (1) restore the prior language of 5 USC 8521(a)(1)(B); (2) reiterate the two-year service requirement enunciated in Public Law 96-342; (3) defer unemployment compensation until the fifth week following separation; and (4) restrict the payment of benefits to not more than 13 weeks. H.R. 4573 was introduced by the Honorable Richard C. White and H.R. 4686 by the Honorable Thomas J. Tauke. Although we take no exception to the first two provisions of either bill, Mr. Chairman, we are adamantly opposed to the third and fourth provisions as, again, highly discriminatory and prejudicial to those who have rendered a very special service. The five-week delay for benefits is not generally imposed upon those in the civilian sector and restricting benefits to 13 weeks is unconscionable. Nearly all states grant others benefits for 26 weeks, the District of Columbia 34 weeks and two states 36 weeks. No, these bills would neither placate our veterans nor assuage their disappointment and anger toward the government they faithfully served.

Mr. Chairman, another area which continues to bring strong criticism from Armed Forces retirees is the offset of unemployment compensation by the amount of retired or retainer pay if maintained or contributed to by a base period employer as stipulated in 26 USC 3304(a)(15) and established by Public Law 96-364, the "Multiemployer Pension Plan Amendments of 1980." A number of pending bills would delete the cited portion of the Internal Revenue Code of 1954 and they are H.R.s 1195, 1492, 1885, 1970, 2808, and 3486 introduced respectively by Messrs. Solarz, Ottinger, Addabbo, Minish, Weaver, and Bingham.

In support of this remedial legislation I would point out, Mr. Chairman, that not all retirements from the Armed Forces are of the member's choosing. Many are mandatorily retired due to statutory limitations on grade with respect to years of service and failure to be advanced to the next higher grade. Officer personnel in most cases submit a request for voluntary retirement in lieu of mandatory retirement and enlisted personnel must often fight to remain on active duty when they have completed 20 years service. As a result, the military careers of many are involuntarily terminated in the prime of their productive lives while they still have families to rear and educate and with greatly reduced income. The job search can be long, disheartening and even financially devastating. Those who truly voluntarily retire have, as a rule, made timely preparation for a smooth transition into retirement and would not be seeking unemployment compensation.

Our veterans and Armed Forces retirees are angry, and justifiably so, and believe they have been sacrificed as scape-goats in arbitrary budget cuts by the government they served with honor. I would suggest to you, Mr. Chairman, that if we are to maintain a professional military establishment of high caliber and esprit de corps to assure our continued freedom, Congress must cease eliminating and eroding benefits for veterans and retirees and restore those to which Armed Forces personnel were led to believe would be available to them upon completion of their active duty.

This concludes my testimony, Mr. Chairman, and I would be pleased to respond to any questions you may have.

RESOLUTION NO. 681—UNEMPLOYMENT COMPENSATION FOR RECENTLY DISCHARGED VETERANS

Whereas, at the present time enlistment in the Armed Forces of the United States is voluntary and is expected to be so for some time to come; and

Whereas, when a man or woman enlists in the Armed Forces of the United States for a specified length of time, a contract is established which is designed to specify the type and length of service; and

Whereas, in most instances the agreement is satisfied by the enrollee with a full completion of the service contracted for; and

Whereas, it is presently the practice that if a person spends 365 days or more in the Armed Forces, they are eligible for unemployment compensation; and

Whereas, there is presently a Bill in the U.S. Congress which would eliminate eligibility for UC if military personnel fail to accept reenlistment when their period of service is finished; now, therefore be it

Resolved, by the 82nd National Convention of the Veterans of Foreign Wars of the United States, that we petition the Veterans Affairs Committees in both the House and Senate to review the proposed Legislation and take appropriate action which would permit honorably discharged veterans to continue to receive unemployment compensation upon termination of their period of service for which they contracted and not be required to reenlist in order to obtain this very important benefit while they seek gainful employment in civilian life.

Adopted by the 82nd National Convention of the Veterans of Foreign Wars of the United States held in Philadelphia, Pennsylvania, August 14-20, 1981.

Chairman FORD. Mr. Anthony?

Mr. ANTHONY. I have no questions.

Chairman FORD. Mr. Schwab, on page 2 of your written statement you talk about individuals who voluntarily leave the service and do not accept reenlistment when there is an opportunity to do so.

You seem to suggest that the Department of Labor believes current law would treat these individuals similarly to those in the civilian sector who refuse a job.

Mr. SCHWAB. That is what the gentleman from the Department of Labor said at this hearing last May.

Chairman FORD. That was his quote?

Mr. SCHWAB. Yes, sir.

Chairman FORD. Refusing a job that would be available to that person.

In your testimony you argue that the Department's position is incorrect. That is, these honorably discharged veterans have not refused work available to them, but rather have fulfilled their enlistment contract and should be entitled to unemployment compensation just as those in the private sector who fulfill a contract.

I don't know whether you were in the room earlier, were you in the room earlier this morning when we started the hearings?

Mr. SCHWAB. Yes, sir, I was.

Chairman FORD. I think with General Tice and Mr. Lewis from the administration?

Mr. SCHWAB. Yes, sir.

Chairman FORD. We talked about the provisions in current law which deny ex-service persons unemployment benefits. The administration has taken the position that this is proper.

I think the House generally recommended, the House version of the bill under reconciliation, that we would keep that intact to a certain degree, a certain level.

Now, are you saying that present law does not treat a person with an honorable discharge who would have an opportunity to reenlist into the service in a way as those in civilian jobs would be treated?

Mr. SCHWAB. No, sir, we do not believe he is. These men are angry, and we think justifiably so.

They believe, as do the retirees who are denied unemployment compensation, that they have just been sacrificed as scapegoats to satisfy arbitrary budget cuts and they are angry.

I have had more telephone calls, more mail on this one subject than anything since the Budget Reconciliation Act was passed.

Chairman FORD. Do you think Firestone or Harvester or some of the other companies in the private sector would in fact offer a person a 2- or 3-year contract, not speaking of management levels, but the bluecollar worker?

Mr. SCHWAB. Mr. Chairman, let me put it in this context: There is no correlation to service in the Armed Forces whether it be peacetime or wartime.

Young men and women go in. They have no idea what they are going to face.

Chairman FORD. That is correct.

Mr. SCHWAB. And recently the Armed Forces have become the last employer. They don't know what they are getting into, but they say well, I will give it a try. I will sign this contract for 2, 3, 4 years, whatever it is in the various services.

They may perform honorably and do their best, but find out in that length of time the Armed Forces isn't for them. They want out.

Chairman **Ford**. They have been trained, given a certain skill or trade. Now they are going into the private sector.

Mr. **Schwab**. There isn't much call for riflemen, torpedo men, parachute riggers, in civil life.

Chairman **Ford**. It wouldn't be fair to say all of them train with those skills.

Mr. **Schwab**. No, sir, but those who acquire marketable skills, whether they leave the service, and many leave because they have acquired skills that pay two and three times more in civilian life, they aren't going to end up on the unemployment compensation rolls.

It is these poor fellows who were trained as riflemen or truck drivers or torpedo men or whatever, where there is no demand at all in civil life for that type of skill.

Chairman **Ford**. Mr. Johnson, did you want to respond?

Mr. **Johnson**. I agree wholeheartedly with what Mr. Schwab has said.

There is no analogy to military service. Even if Firestone offered a contract, it is unlikely Firestone is going to jerk you around the country three or four times or send you to some far-off foreign land, or keep you aboard ship somewhere for 6 or 7 months just prior to discharge, so you don't have an opportunity to look for another job, much less another job in East Falls, Idaho.

You have a situation where there is no analogy to military service, and you have a situation where an individual has made a commitment. Once that commitment is fulfilled, we should not try to create an economic draft to keep him there.

That is exactly what this does. It reeks of draft. We are creating such an economic disincentive——

Chairman **Ford**. Do you think part of the the intent of this is to keep the military personnel intact?

Mr. **Johnson**. It was justified, Mr. Ford, in this committee prior to its passage.

No; I am not naive enough to believe that. It was simply a budget cutting measure. It was a good way to find $100 million in the budget.

But it was justified by the administration as a tool for alleviating some of the retention problems we have in the Armed Forces today.

To some degree it has created an economic draft because there are a number of people who are economically motivated to reenlist by this.

But, by far and for the most part people are simply economically inconvenienced by it, and it is a shame that this is the kind of support we give to an All Voluntary Force.

It really is a shame. If we had a drafted force, how could we justify it?

If we just reached out and snatched somebody off the street and said, all right, you are in the Armed Forces, how could we justify this?

There is no way we possibly could. We are not talking so much in relation to civilian employment and military employment. What we are talking about here is, is this right?

Is this how we have to treat our ex-servicemen to save dollars for the United States?

We don't think so, Mr. Chairman. It is not right and in the most equitable presentation we could make there has to be some unemployment compensation, some postservice assistance for people who have honorably fulfilled their commitment.

Chairman FORD. I think most of us on the House side, we would have to say the record would reflect we agree with you on that particular issue. There is a budget cost involved. On the basis of budget savings the administration saw fit to severely cut the UCX program.

A supplementary purpose of these hearings today is to examine how we could maybe offset the budget cost.

Mr. JOHNSON. Part of that offset, Mr. Ford, and we would support this, I know the Non Commissioned Officers Association and Marine Corps League—I am not sure about NAUS on the issue, although I have been asked to represent them today—but I know the Non Commissioned Officers Association and Marine Corps League would support something of a reverse in the direction of the legislation.

Provide those benefits to the individual who successfully completes the contract that he committed himself to, that individual who is honorably discharged, and deny those unemployment compensation benefits to people who, by their own volition, or acts of their own volition, end up discharged from the Armed Forces after a period of less than the length of their contract because of misconduct or for any other reason.

They might be severed with an honorable discharge or a discharge under honorable conditions.

By this you would catch up a lot of people who are unfit for military service by reason of homosexual tendencies, because they are generally miscreants, or malcontents, or because we found incidents of drug abuse.

These are individuals who, under today's system, are put out of the armed services with general discharges.

These individuals remain eligible for unemployment compensation and it is not right.

We would support offsetting it from that aspect, and that would represent, my understanding, approximately $30 to $40 million a year.

Chairman FORD. Thank you very much, Mr. Johnson.

Mr. Anthony?

Mr. ANTHONY. Thank you, Mr. Chairman. I am just curious. Do you have available, that you could submit for the record, the number of veterans who draw unemployment after they leave the service for whatever reason?

Mr. JOHNSON. I do not have those figures, Mr. Anthony, but I am sure they could be secured.

[The following was subsequently received:]

NON-COMMISSIONED OFFICERS ASSOCIATION
OF THE UNITED STATES OF AMERICA,
Washington, D.C., November 10, 1981.

Hon. HAROLD FORD,
Chairman, Subcommittee on Public Assistance and Unemployment Compensation, Committee on Ways and Means, Washington, D.C.

DEAR MR. CHAIRMAN: As per your request, the following information is provided for the record of hearings on unemployment benefits dated October 28, 1981.

During the 12 months ending June 30, 1981, approximately 360,000 people were separated from the armed forces under circumstances which would qualify them for unemployment benefits. Approximately 150,000 applied for and received benefits under the UCX program. The average duration of benefits was 19 weeks.

The Department of Labor does not have sufficient new data to provide comparison with changes provided in the Budget Reconciliation Act. However, they estimate 30,000 to 35,000 veterans will be eligible for UCX benefits each year. Historically, this will produce about 15,000 applications at an annual cost of about $30 million.

Please contact me if I can be of any further assistance on this issue.

Sincerely,

RICHARD W. JOHNSON, Jr.,
National Legislative Director.

Mr. ANTHONY. What I was curious about, do you have any studies that your associations have done that indicate the length of time it takes to obtain a job after they are no longer service connected?

The reason I am curious about this, one of the bills is 13 weeks, one is 26. You mentioned some other States that even exceed the 26 weeks. I just wondered if you had an indication of what the average is?

Mr. JOHNSON. I think those provisions of the bills are based on the economic considerations. They are looking at the cost of the bill, not the amount of time it takes the veteran to find a job.

Mr. ANTHONY. I understand that.

I was very interested, and I made some notes about that. I am trying to keep me a little list of witnesses that come before various committees that talk about people who feel that the administration is more interested in the bottom line than they are in equity and fairness, and that there is no policy involved other than the policy of the budget in some of these recommendations.

You have made that point very well. It was a point I made earlier today and it is a point that I have made several times to Mr. Stockman.

Unfortunately, I think we may spend the rest of this year and the rest of next year undoing a few of those things where, in the haste, some rather important policy decisions were overlooked, albeit for a very important major policy decision; that is, to try to balance the budget.

But again, trying to put some fairness into it, I am looking for some background information so I can know where to come down.

Mr. JOHNSON. I understand that. We have been after BLS and the Veterans Employment Service to provide us better information on the unemployment characteristics of veterans, particularly Vietnam veterans, for years.

Bureau of Labor Statistics in their monthly survey, does not include anything other than the fact that a veteran is unemployed. They don't go back to when he got out or what his period of service was. It is very hard to identify individuals under these kinds of circumstances.

So the only way to identify these individuals is by participation or reimbursement out of the UCX program. That is something I have not approached and I have not sought to find those figures, or not sought to identify what is being paid out in the UCX program, and to how many people.

Even at that point I am not sure we could identify the nature of discharge or the type of discharge or the period of discharge in a statistical manner that would satisfy us in any way.

What we had prior to August 13, prior to July 1, the retroactivity, was a system that paid out unemployment compensation benefits to virtually anybody who was discharged for other than dishonorable reasons from the Armed Forces.

What we have now is a situation where nobody is quite sure who we pay because Defense says we are severing people for cause if the guy is overweight, and the Labor Department is saying, well, as long as he has got a less-than-honorable discharge, but an other-than-dishonorable discharge, we can pay him.

So it is very hard to identify the kind of audience that we are dealing with and numbers of people we are talking about.

But I will attempt to secure that information, Mr. Anthony. If I am successful, I will provide it to this committee.

Mr. ANTHONY. I thank you and I think the testimony that the three of you have given us has probably highlighted the complexity of the issue and some of the policy that we are going to have to decide in making those decisions.

Thank you, Mr. Chairman.

Chairman FORD. Thank you all very much.

The committee will call on Attorney Jerome M. Zeifman, National Senior Citizens Law Center, and Mrs. Betty Duskin, director of research of the National Council of Senior Citizens.

I understand Mrs. Duskin is not here. So Mr. Zeifman, we will proceed with you.

STATEMENT OF JEROME M. ZEIFMAN, ATTORNEY, NATIONAL SENIOR CITIZENS LAW CENTER, ACCOMPANIED BY STEVEN ZALESNICK, LEGISLATIVE REPRESENTATIVE, NATIONAL RETIRED TEACHERS ASSOCIATION AND AMERICAN ASSOCIATION OF RETIRED PERSONS

Mr. ZEIFMAN. Thank you very much, Mr. Chairman.

I am accompanied today by Mr. Steven Zalesnick with the American Association of Retired Persons, one of the many aging organizations on whose behalf I have submitted a statement for the record.

I have actually submitted two statements, one on behalf of the National Senior Citizens Law Center, and the other on behalf of some 26 national aging organizations.

I would like to request that those statements be included in the record at this point.

Chairman FORD. They will be made a part of the record at this point.

[The statements follow:]

Statement of Jerome M. Zeifman, National Senior Citizens Law Center, on Behalf of American Association of Homes for the Aging; AFL-CIO/Social Security Department; Asociacion Nacional Pro Personas Mayores; Association for Gerontology in Higher Education; Concerned Seniors for Better Government; Gray Panthers; Legal Research and Services for the Elderly; National Association of Area Agencies on Aging; National Association of Mature People; National Association of Nutrition and Aging Services Programs; National Association of Retired Federal Employees; National Association of State Units on Aging; National Caucus and Center on Black Aged; National Council on the Aging; National Council of Senior Citizens; National Indian Council on Aging, Inc.; National Retired Teachers Association/American Association of Retired Persons; National Senior Citizens Law Center; United Auto Workers/Retired Members Department; Urban Elderly Coalition; Western Gerontological Society; Older Women's League; National Pacific/Asian Resource Center on Aging; and National Association of Meal Programs

Mr. Chairman, and members of the Subcommittee, let me express the appreciation of the National Senior Citizens Law Center for the opportunity you have afforded me to appear before you today to express our support for Representative Thomas Downey's bill, H.R. 1902 and other related measures which would prohibit any reduction in unemployment compensation because of the receipt of Social Security or Railroad Retirement benefits.

The National Senior Citizens Law Center is a non-profit organization specializing in the legal problems of elderly poor people. Our staff of lawyers regularly respond to requests for assistance in those areas of the law which substantially affect the elderly. In that regard it is especially significant that I know of no single issue in the past few years which has generated more requests for our assistance than the problems generated by Federal requirements that Social Security benefits be offset against unemployment insurance benefits.

In addition to presenting testimony on behalf of the National Senior Citizens Law Center I have also been asked by a fairly large number of national and local organizations, representing literally millions of elderly, to submit to you today a combined statement on their behalf in support of H.R. 1902 which all of the organizations have endorsed. I have attached that statement to mine, together with a list of endorsing organizations, and would like to request that these documents be inserted in your record at this point.

All of us would like particularly to commend Representative Downey for formulating his bill and the Subcommittee for considering it today.

In our view, and in the view of the numerous other organizations whose statement I have submitted, the current federal mandatory offset requirements are inequitable and harsh—denying unemployment insurance benefits to those older workers who deserve such benefits the most. Let me illustrate the inequity and the harshness with a simple hypothetical example, drawn from our actual experience in almost every part of the United States.

A large company begins to experience a reduction in its sales and decides to lay off a number of its employees. Assume that those employees include the following five persons:

Employee number one is an executive who had been receiving a salary of $40,000 a year. He is also fortunate enough to have inherited $25,000 from a deceased parent which he has invested and which gives him an investment income of approximately $30,000 a year.

Employee number two is a retired Army colonel who went to work for the company after leaving the military. He receives a military pension of $20,000 per year.

Employee number three is a former Congressional staffer who had previously been employed on Capitol Hill as a secretary before joining the company as a secretary. She receives a federal annuity of $15,000 per year.

Employee number four formerly was employed as an executive in another company from which he retired at age 65 and receives a pension of $30,000.

Employee number five is 68 years old and currently receives $400 a month in the form of Social Security benefits arising largely as a result of 30 years of employment as a janitor in a tobacco warehouse. To supplement his Social Security benefits, and help support his ailing wife, he has been employed for the last three years as a janitor with the company that has just laid him off.

The stark reality of the present law is that each of the employees described above with the exception of employee number 5 will be able to receive unemployment insurance benefits under the present Federal law, without any mandatory offset requirements. In striking contrast, employee number five is denied full compensation and is required to have at least 50% of his Social Security benefits offset against his unemployment compensation.

I for one can suggest to you only one logical explanation for this result—and that is a political explanation. Essentially, the working poor did not have enough political impact on the United States Senate in the 96th Congress to persuade the United States Senate to adopt the relief provision for unemployment insurance compensation that was included in the House version of the Multiemployer Pension bill that eventually became Public Law 96-364. Reduced to its essence the fight over this issue was a fight between those employers who were represented by such organizations as the United States Chamber of Commerce and the millions of older workers who remain in the work force in order to supplement their limited benefits under the Social Security system. Realizing that they could avoid paying unemployment insurance taxes by denying insurance to millions of older workers, the organizations of large employers lobbied vigorously against the House passed provision. At that time the working elderly were not well enough organized on this issue and, in Capitol Hill vernacular, simply did not have political clout.

In our view, Congressman Downey's bill, H.R. 1902, unequivocally addresses itself to the inequity that was created in Public Law 96-364. I understand that his testimony in support of his bill is already included in your record and we would like to subscribe to it in its entirety and to commend him once again for his efforts. Now that the Downey bill has framed the issue squarely, we are hopeful that this Subcommittee and eventually the House will act favorably to approve H.R. 1902. We are also hopeful that if the issue is squarely framed in the Senate, the Senate will also approve the legislation.

In closing, on behalf of myself and the numerous organizations whose views I have submitted, I would like to thank you once again for your consideration of this issue, which is of such major importance to so many millions of older Americans.

STATEMENT IN SUPPORT OF THE DOWNEY BILL, H.R. 1902 AND RELATED MEASURES TO PROHIBIT REDUCTIONS IN UNEMPLOYMENT COMPENSATION BECAUSE OF THE RECEIPT OF SOCIAL SECURITY OR RAILROAD RETIREMENT BENEFITS

The undersigned organizations strongly support the Downey Bill, H.R. 1902, and other related measures, which would prohibit any reduction in unemployment compensation because of the receipt of Social Security or Railroad Retirement benefits.

In enacting Public Law 96-364, the 96th Congress commendably provided for significant relief from the operation of mandatory offset requirements. However, the relief which was provided was severely limited with respect to those persons who are in greatest need and have the least resources—older workers whose only retirement income is Social Security or Railroad Retirement benefits. As a result, under current Federal law, federal retirees and workers who have private pensions receive full unemployment compensation benefits during periods in which they are involuntarily out of work. In contrast, an older worker who is compelled to remain in the work force because of the inadequacy of his or her Social Security or Railroad Retirement benefits is still subjected to federal mandatory offset requirements with regard to at least 50 percent of the benefits.

The present inequity in the law is patently harsh and unjust. The need for older workers to augment their Social Security or Railroad Retirement benefits, through continued employment, grows substantially greater in our present inflationary economy, compounding the inequity and harshness of the present offset requirement. For that reason we commend Representative Downey and the various other members of Congress who support a repeal of the present offset requirement.

We are pleased to express to you our wholehearted and unqualified endorsement of H.R. 1902.

American Association of Homes for the Aging;
AFL-CIO/Social Security Department;
Association Nacional Pro Personas Mayores;
Association for Gerontology in Higher Education;
Concerned Seniors for Better Government;
Gray Panthers;
Legal Research and Services for the Elderly;
National Association of Area Agencies on Aging;
National Association of Mature People;
National Association of Nutrition and Aging Services Programs;
National Association of Retired Federal Employees;
National Association of State Units on Aging;
National Caucus and Center on Black Aged;
National Council on the Aging;
National Council of Senior Citizens;

National Indian Council on Aging, Inc.;
National Retired Teachers Association/American Association of Retired Persons;
National Senior Citizens Law Center;
United Auto Workers/Retired Members Department;
Urban Elderly Coalition;
Western Gerontological Society;
Older Women's League;
National Pacific/Asian Resource Center on Aging, and
National Association of Meal Programs.

Mr. **Zeifman**. Speaking for the National Citizens Law Center, if I can simply summarize our position, I would like to point out to you the legislative history of Public Law 96-364.

Several years ago, as most of you know, Congress enacted a mandatory offset requirement. When that requirement went into effect last year it created a national stir.

Our organization, for example, received more requests for assistance from indigent elderly persons on that single issue than any other issue that we have been working on.

In the last Congress because of the national outcry that was raised as a result of the mandatory requirements, legislation was enacted as part of the multiemployer pension bill which went a certain distance in repealing the harsh effects of the offset requirement.

In our view, however, Mr. Chairman, that legislation did not go far enough, and created, in our view, a horrendous inequity. To illustrate the inequity, let me give you the following example.

Let's assume, for example, there are two employees both of whom have been reemployed later in life by a particular company, and both of whom are laid off.

One employee might have some form of a pension from a previous company, or the employee might be a former congressional staffer who has a Federal annuity, but then has gone back to work and been employed.

The other employee—and this is typical of the many, many clients who have called on us for assistance—might have been a janitor in a warehouse working for 30 years at the minimum wage.

As a result of those 30 years of employment, when he reaches 65, let's assume he's receiving $400 per month in social security benefits.

Now, he simply cannot survive on that $400 a month, and so he then goes back to work and is reemployed. Let's assume now he works for 3 years and then is laid off.

Chairman **Ford**. He is over 65, though, right?

Mr. **Zeifman**. He is over 65. He goes back to work at age 65 because he cannot survive on $400 a month of social security.

He works for 3 years, has contributed to the unemployment system, as has his employer, and he is then laid off. Then goes to apply——

Chairman **Ford**. Three consecutive years, though. Has he paid into the social security system?

Mr. **Zeifman**. Yes. Right. Like everyone else.

Chairman **Ford**. OK.

Mr. **Zeifman**. However, he is laid off along with his counterpart, the person with the Federal annunity, for example, who's also been laid off.

That particular employee, because is he receiving $400 a month of social security benefits, is still nevertheless subjected to the mandatory offset requirement, whereas the other employee, the employee with a Federal annuity or a private pension, is not subjected to the offset requirement.

As I indicated in our prepared testimony, I can't give any logical explanation for that result, other than the fact that at the time Public Law 96-364 was pending in the Congress the elderly workers simply did not have enough political clout.

I might also remind you that in the House-passed version of the multiemployer pension bill, relief was, in fact, provided for social security recipients.

The Senate rejected that. The issue got very caught up with a number of other complex issues in the conference committee and the final outcome was to deny relief for social security and railroad retirement benefits.

Today, as a practical matter, we would support any repeal of any of the mandatory offset requirements. However, we particularly endorse and commend Mr. Downey's bill, H.R. 1902, for several reasons.

First of all, Mr. Downey's bill performed a great service in framing the issue squarely, addressing the issue clearly to the problem of those people who are in the most need of relief.

And also, frankly, we like the part of Mr. Downey's bill which would not only repeal the offset, the mandatory nature of the offset requirement, but which would, in fact, prohibit the offset entirely.

That essentially concludes my remarks, Mr. Chairman.

Chairman **Ford**. Mr. Zeifman, I want to thank you very much for appearing before the committee today. You have enlightened me a little bit.

I was under the impression that a senior who worked after the age 65 if they worked and paid into the social security fund and were subsequently laid-off, would in fact, be eligible to receive full unemployment benefits.

Mr. **Zeifman**. No, they would be still subjected to a mandatory offset requirement, at least in the hypothetical example I gave you, there would still be a mandatory requirement. Of the $400 social security benefits, essentially $200 would be reduced.

Chairman **Ford**. Thank you very much.

The next panel I would like to call up is Mr. Brian Lutch, assistant dean of Northeastern University School of Law; Mr. Phillip S. English, research analyst, Committee on Labor and Industry; also Mr. Peter J. Burke, executive secretary of the Wisconsin improvement program; and Mr. Robert T. DuVal, president of Unemployment Cost Control, Inc.

I will ask Mr. Anthony to chair the committee while I walk over to the floor and vote.

Mr. **Anthony** [presiding]. Mr. Lutch.

STATEMENT OF BRIAN LUTCH, ASSISTANT DEAN, NORTHEASTERN UNIVERSITY SCHOOL OF LAW, ON BEHALF OF MICHAEL MELTSNER

Mr. **Lutch**. I am Brian Lutch, assistant dean, Northeastern University School of Law. Dean Michael Meltsner had hoped to be here today to support legislation vital to the interests of Northeastern Law School and to all graduate-level cooperative plans.

But he is undergoing minor, but necessary, oral surgery today in Boston. He's asked me to appear before you today on his behalf and I am grateful for the opportunity to do so.

I would first like Dean Meltsner's prepared statement to be entered into the record at this time.

Mr. ANTHONY. Yes; the full testimony will be accepted for the record. You are welcome to summarize in anyway you see fit.

[The statement of Michael Meltsner follows:]

STATEMENT OF MICHAEL MELTSNER, DEAN OF NORTHEASTERN UNIVERSITY SCHOOL OF LAW

Mr. Chairman and Members of the Committee: My name is Michael Meltsner. I am Dean of Northeastern University School of Law in Boston, Massachusetts. I am here today to urge you to act favorably on legislation vital to the interests and continued success of Northeastern University School of Law and to the programs of all graduate schools that attempt to offer students practical experience as part of their education.

You have before you a small amendment to the Federal Unemployment Tax Act (FUTA) which would remove the age limitation of 22 years from that portion of 26 U.S.C. § 3306(c)(10)(C) which exempts cooperative education interns from the provisions of the unemployment compensation statutes. Under this proposal, § 3306(c)(10)(C) would help maintain not only undergraduate but also graduate cooperative education plans by clearly making the unemployment compensation law inapplicable to them.

Let me begin by briefly describing the unique cooperative education program at Northeastern University School of Law which provides students with the unsurpassed opportunity to prepare for the practice of law by emphasizing both traditional academic excellence and development of practical professional skills. At Northeastern, the first year of law school consists of nine months of full-time academic study. At the end of the first year the class is divided into two sections, one of which commences the first upper-class academic quarter while the other section begins the first full-time cooperative employment quarter. Thereafter, the two sections alternate for the remainder of the second and third years so that each School of Law graduate enters the profession with one full year of practical legal experience in addition to traditional classroom education.

Students attending Northeastern University School of Law receive academic credit for their cooperative work experiences and must successfully complete four quarters of cooperative employment in order to graduate.[1] Over 300 law office employers, including private law firms, legal aid offices, judges, unions, corporations, advocacy groups and governmental agencies, regularly participate in the cooperative legal education program. In fact, some of our students have benefited from productive educational experience working for committees of the Congress, and we currently have a student assigned to the Office of Legal Counsel of the United States Senate.

As you can see from this brief overview, the cooperative program is an integral part of the educational regimen at Northeastern. The Law School annually receives over 2300 applications for 135 first-year seats. Students come to Northeastern because of its distinctive cooperative educational opportunity. Students understand that, in addition to seven academic quarters, they will be required to complete successfully four cooperative work quarters of eleven weeks each to obtain their J.D. degree.

Obviously, consistent and responsible employer participation is the key to the cooperative program. Employers are expected to supply training, direction for and supervision of the student's legal work. Without dedicated employers, the cooperative legal education program could not function.

Passage of the legislation before you today is important to protect the cooperative program and the employers so vital to it. When 26 U.S.C. § 3306(c)(10)(C) was added by Congress in 1970, the legislation excluded from the definition of "employment" work performed by a student enrolled in a cooperative education program as long as the student was under twenty-two (22) years of age. While this age limitation is sufficient to cover most undergraduate students, it does not cover graduate-level cooperative programs like that of the School of Law.

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[1] Each student's work performance is evaluated by the supervising attorney(s) at his/her place of employment, and the evaluations become a part of the student's permanent academic record.

The importance of the age limit became clear only over the past year when several of our students or graduates applied for unemployment benefits on the basis of their cooperative employment while at the Law School. Although all but one of the students voluntarily withdrew filed claims when they learned that their specific employers would be charged for benefits if the claims were successful, one applicant was granted benefits. All of the affected employers were outraged at the prospect of paying additional taxes for students in whom they invested significant time and effort in the educational process. The adverse reaction of these valued cooperative employers made clear that passage of the amendment before you is absolutely necessary to protect the very existence of graduate-level cooperative programs like that of Northeastern University School of Law, and the participation of employers in them.

In 1970, Congress did not explain why it limited the cooperative plan exemption by age, but presumably it was thought that students would most likely be under 22 years old. There is no evidence that Congress considered the existence or potential of cooperative graduate schools[2] or that Congress could have foreseen the tremendous growth in school attendance at all education levels by those over 22 years old. Now, in 1981, with the trend away from the traditional 18 to 22 year college age evident to all of us, this proposed change in the law is really but an update of an already established principle.

If the legislation before you is successful, the statute would still satisfy all of the purposes Congress articulated when it originally enacted § 3306(c)(10)(C). As the 1970 Senate Report noted:

(b) *Exclusion of students in work/study program.*

Many schools and colleges combine outside work experience with formal classroom study. In some of these programs, students enrolled at an institution alternate between full-time classroom study and full-time employment in outside industrial or commercial establishments on a quarter or semester bases. In other programs, the students spend a portion of each day or divide their time on a weekly basis between classroom attendance and outside work. The work parts of these programs are integrated into the regular school curriculum and form a part of a formalized full-time educational program.

Students enrolled in these work/study programs usually engage in employment of the type which is covered under the unemployment compensation system. The wages paid to these students are, therefore, subject to the federal unemployment tax under present law. *The committee does not believe that work which is part of an integrated work/study curriculum involves the kind of employer-employee relationship that should be covered by the unemployment insurance system.* In some cases the employer may employ these students as his contribution toward the operation of an educational program. *The committee believes that the school might have more success in persuading employers to participate in cooperative educational plans if the wages paid to the students were not taxable under the unemployment tax laws. . . .*" (emphasis added).

Sen. Rept. No. 91-752, 91st Cong., 2nd Sess. (1970); 1970 U.S. Code Cong. and Ad. News 3622.

This reasoning applies as well to those cooperative programs serving students who are over age 22 as to those generally serving younger students. Equally important, eliminating the age limitation would not lead to misuse of the provision since the statute already contains considerable insurance against such misuse. First, the individual student must be enrolled at an institution which maintains "a regular faculty and curriculum and normally has a regularly organized body of students in attendence." This prevents an employer from having employees attend a "shell" university without real requirements. Second, the student must be in a full-time program, thus insuring that even those over the age of 22 who attend are not merely taking a course at an employer's behest in order to gain him the exemption. Third, the work must be an "integral part" of the academic program. This insures that only employment which is clearly part of the school program would be exempt. Finally, the program cannot have been established for or on behalf of an employer or group of employers. This prevents a compensatory job from becoming an educational one through employer enrollment of employees in an institution without a real academic purpose.

Certainly the cooperative legal education program at Northeastern operates fairly and effectively for all participants. Students receive an enhanced professional education which unites a rigorous academic course of study with an enduring tradition of practical apprenticeship. Also, the earnings students receive while "on co-op" defray in part today's extraordinarily high education costs, reduce student dependence on government grants, and through their cooperative experiences students substantially increase their opportunities to obtain permanent employment.

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[2] Indeed, Northeastern University School of Law's cooperative program was not finally accredited by the American Bar Association until August 1971, after the addition of § 3306(c)(10)(C).

The University is proud that its innovative and successful cooperative program enriches educational and professional opportunities for its students. Employers who contribute their time and expertise in hiring and training students participate significantly in the education of future lawyers. Many view themselves as adjunct professors of the School of Law. Employers compensate "co-op" students adequately in accordance with ability to pay and in return receive diligent and enthusiastic legal assistance. The imposition upon employers of increased unemployment compensation taxes unfairly alters the successful balance of interests and obligations we have worked hard to effect, particularly when one considers that students are scheduled for (and employers provide) over 540 individual cooperative education quarters each year for the School of Law alone.

The only solution to this problem is a legislative determination that clearly excludes all cooperative education students, regardless of age, from using cooperative employment as a basis for receiving unemployment benefits. The federal government has not hesitated to create exemptions to the FUTA where providing unemployment benefits would not serve the purpose of the act. As you know, the purpose of the Act is to provide security and stability in employment, but students who enter a cooperative program are not primarily motivated to take cooperative jobs for income purposes. Rather, they know that they must fulfill the work requirement for educational purposes in order to obtain their degrees.

In sum, a general exemption for cooperative employment is fair, equitable and necessary to maintain the participation of highly-valued cooperative education employers without whom, as I indicated earlier, our unique and successful program could not exist.

Thank you for your time and consideration.

Mr. LUTCH. Cooperative education interns under 22 years of age are already exempt from the unemployment compensation laws. The amendment before you today seeks only to extend the exemption to students over the age of 22.

To best explain the need for this change, let me briefly describe the cooperative legal education program at Northeastern School of Law.

At Northeastern, the first year of law school consists of nine months of traditional full-time academic study. At the end of the first year, the class is divided into two sections, one of which commences the first upper-class academic quarter and the other section begins the first full-time cooperative employment quarter.

Thereafter, the two sections alternate for the remainder of the second and third years of law school, so that each graduate enters the profession of law with, in addition to traditional classroom education, 1 full year of practical legal experience.

Students attending Northeastern University School of Law receive academic credit for their cooperative work experiences and must successfully complete four quarters of cooperative employment in order to graduate.

Over 300 law office employers regularly participate in our cooperative program. Some of our students have benefited from working with committees of this Congress and we currently have a student placed with the U.S. Senate Office of Legal Counsel.

The cooperative program is an integral part of the educational regimen at Northeastern. Annually, we receive over 2,300 applications for just 135 first-year seats.

Students apply to and come to Northeastern Law School because of its distinctive cooperative educational opportunity.

Obviously, consistent and responsible employer participation is the key to the cooperative program. Employers are expected to supply training, direction for and supervision of a student's legal work.

Without dedicated employers, the cooperative legal education program at Northeastern could not function. In 1970, Congress did not explain why it limited the cooperative plan exemption by age.

There was no evidence that Congress considered the existence of or potential of cooperative graduate schools or that Congress could have foreseen the tremendous growth in school attendance at all educational levels by those over 22 years old.

Now, in 1981, with the trend away from traditional 18- to 22-year college age evident to all of us, this proposed change in the law is really but an update of an already established principle.

If the legislation before you is successful, the statute would still satisfy all of the purposes Congress articulated when section 3306(c)(10)(c) of title 26 was originally enacted.

The bill before us has received substantial support in testimony you have already heard today, but I think it is important that I respond briefly to the two minor objections that were raised to the bill.

Mr. Barrett of the Montana Employment Security Division said his group generally opposes all exclusions from the Federal Unemployment Tax Act. But please note that this organization had not specifically considered the exclusion of cooperative student interns, and Mr. Barrett admitted he could find no rationale for the age limitation.

I would simply point out that the exclusion, is limited to specific educational programs, and that any work performance is specifically incident to an educational program.

Congress has clearly supported the internship concept and has well-recognized that the kind of relationship between a cooperative employer and a student intern is not the type of relationship which should be covered under the Federal Unemployment Tax Act.

With respect to Mr. Seidman of the AFL-CIO, his objection again is a general position which I suggest has not well-considered the specific need and justification of the cooperative intern exemption.

I would note that many unions are strong supporters of our cooperative legal education program, including the United Auto Workers, International Union of Electrical Workers and the American Federation of State, County & Municipal Employees, to name a few.

All of these general counsel offices understand that the professional training they provide students is not employment in a typical sense, but is an integral part of an educational program and its objectives.

Cooperative legal education at Northeastern operates fairly and effectively for all participants. Students receive an enhanced professional education. The earnings students receive while on cooperative assignment defray in part today's extraordinarily high education costs and reduce student dependence on government grants.

Employers who contribute their time and expertise in hiring and training students participate significantly in the education of future lawyers. Employers compensate cooperative students adequately. The imposition upon employers of increased unemployment compensation taxes unfairly alters the successful balance of interests and obligations we nave worked very hard to affect and jeopardizes the very existence of our unique and most successful program.

Thank you.

Chairman FORD. Thank you.

Mr. English.

STATEMENT OF PHILIP S. ENGLISH, RESEARCH ANALYST, COMMITTEE ON LABOR AND INDUSTRY, PENNSYLVANIA SENATE

Mr. ENGLISH. My name is Philip English. I am a research analyst for the Labor and Industry Committee of the Pennsylvania Senate, and am really testifying on behalf of Senator Robert Kusse, who is chairman of that committee.

We wish to testify on the issue of excluding student interns over 21 from FUTA. To summarize our remarks, really, we feel that there is no longer any reason why this exemption should be limited to students under the arbitrary age of 22.

Our committee has been interested in this issue since February this year when a bill was introduced to amend Pennsylvania's Unemployment Compensation Act to allow older students to benefit from the student exemption.

Our research showed that passage of the bill would create conformity problems for our State without congressional action to change the Federal Unemployment Tax Act. We urge you to take this action.

The exemption of student interns involved in cooperative education programs is desirable since it encourages employer participation in these programs.

However, since this exemption was initially enacted into law, there have been fundamental changes in the student population. While the rate of high school enrollment has been decreasing in recent years, the rate of mature students that have been returning to school has been steadily increasing.

Many adults are returning to college seeking to upgrade their skills for advancement, cross-train into related careers or enter new professions. This has been encouraged in part by family trends, such as the increase in single parents and two-income families.

An indication of these new realities is the fact that the average age at most institutions of higher learning has increased. For example, at Bucks County Community College in southeastern Pennsylvania, the average student age is now 30 years old.

We feel that the desirability of the student unemployment compensation exemption and the increased number of mature students seeking internships of this sort argues strongly for the removal of the age limitation on this exemption from Federal law.

Thank you, sir.

[The prepared statement follows:]

STATEMENT OF PHILIP S. ENGLISH, RESEARCH ANALYST, COMMITTEE ON LABOR AND INDUSTRY, PENNSYLVANIA SENATE

On behalf of Senator Robert J. Kusse, Chairman of the Labor and Industry Committee of the Pennsylvania Senate, I am here to testify in favor of removing the age qualification from the Unemployment Compensation exemption currently extended to student interns enrolled in cooperative programs. We feel that there is no longer any reason why this exemption should be limited to students under the age of 22.

Our Committee has been interested in this issue since February of this year, when Senator Edward Howard introduced Senate Bill 386, which would amend Pennsylvania's Unemployment Compensation Act to allow students 22 and older to benefit from the exemption. Our research revealed that passage of the bill would create conformity problems for our state Unemployment Compensation system without congressional action to change the Federal Unemployment Tax Act (FUTA). We urge you to take this action.

Cooperative Education programs provide on-the-job experience to students of secondary and postsecondary education which is directly related to their academic study and career aspirations. They offer a variety of advantages to participating employers. Cooperative Education reduces employee turnover and acts as a low cost training and recruitment approach, particularly for small firms that would otherwise be unable to afford a training program of this sort. It increases employee efficiency and productivity while reducing unit cost, and facilitates entry level recruiting by developing a select pool of experienced recruits. Finally, it improves access to and by qualified minority applicants.

The exemption of students participating in cooperative education and similar programs from coverage under unemployment compensation is desireable since it encourages employer participation in these programs. However, since this exemption was initially enacted into law, there have been fundamental changes in the student population.

While the rate of high school enrollment has been decreasing in recent years, the rate of mature students (over age 22) that have been returning to school has been steadily increasing. Many adults are returning to college seeking to upgrade their skills for advancement, cross-train into related careers, or enter new professions. This has been encouraged by family trends, such as the increase in single parents and two-income families. An indication of these new realities is the fact that the average age at most institutions of higher education has increased. for example, Bucks County Community College in southeastern Pennsylvania, the average student age is now thirty.

We feel that the desireability of the student Unemployment Compensation exemptions and the increasing number of mature students seeking internships of this sort argue strongly for the removal of the age limitation on this exemption from federal law.

Mr. **ANTHONY**. Thank you very much, Mr. English.

Mr. Burke.

STATEMENT OF PETER J. BURKE, EXECUTIVE SECRETARY, WISCONSIN IMPROVEMENT PROGRAM

Mr. **BURKE**. My name is Peter Burke. I am executive secretary of the Wisconsin Improvement Program, a consortium of 18 teacher-preparation institutions in the State of Wisconsin. I have submitted my testimony prepared for the record and I would like to have it accepted if it has been received.

Mr. **ANTHONY**. It will be accepted in full. You are welcome to summarize any way you see fit.

Mr. **BURKE**. Thank you, Mr. Chairman.

I would like to summarize our position. Being a neophyte at this kind of proceeding, I would like to beg the indulgence of the committee and try to identify a few points from my prepared testimony that are important to us.

No other issue we have been facing in the State of Wisconsin has been so important to us that we would send a representative to Washington to speak on behalf of a piece of legislation such as H.R.

3253. We support the exclusion of the age limitation from a very good piece of legislation, 3306(c)(10)(C) of the Internal Revenue Code. This law has as its intent the exclusion of people in programs such as the teacher internship which is coordinated by the Wisconsin Improvement Program.

We have teacher interns out of 18 colleges in 4 States, Wisconsin, Minnesota, Iowa, and Illinois. Well over 90 percent of these people are age 22 or over.

Two situations in teacher education, or in teaching, create a problem for us. First, a first-semester intern has a relatively limited chance of entering a job market that has been completely filled in September, and carries through a full academic year. That is, the usual new hiring is done in September, or in the summer before September, and there are few jobs available for January graduates. The second situation is that a person finishing one-semester internship in May or June will not receive a position or employment until September. The jeopardy of unemployment compensation it has created undue concern on the part of the public schools who receive our interns and pay them their stipend.

The two situations that I have outlined have occurred. They haven't been wholesale, but where they have occurred in 27 different cases, nearly half of those school districts have discontinued the intern program in their schools because of this jeopardy for unemployment compensation.

We would like to speak in favor of the bill introduced by Congressman Gunderson. His testimony on H.R. 3253 was taken earlier today.

I would also like to share, not just a concern from Wisconsin, but a national concern for this bill. I have interacted with my colleagues from other States through the Association of Teacher Educators, a national association that includes people from colleges and school systems nationwide.

There has been a national trend toward increasing the amount of time people have in preparation to be a teacher, and especially increasing their time in the field. An intern program where they are paid for this activity, for whatever amount they are doing, is a positive part of a field-based program, but is jeopardized by this age limitation in the unemployment compensation law.

States like New York and Oklahoma, which are moving toward legislated internships in teacher education, may have some cause for slowing that process due to jeopardy like this.

I would like to thank the committee for the opportunity to testify and I would be happy to answer any questions.

[The prepared statement follows:]

STATEMENT OF PETER J. BURKE, EXECUTIVE SECRETARY, WISCONSIN IMPROVEMENT PROGRAM

SECTION 3306(C)(10)(C) OF THE INTERNAL REVENUE CODE; EXCLUSION OF STUDENT INTERNS OVER AGE 21 FROM FUTA

The University of Wisconsin-Madison, along with 11 other public universities in Wisconsin and six private colleges, have created a unique teacher training program called the Wisconsin Improvement Program, This program, an outgrowth of the search for means of improving teacher education, was initiated in 1959 at the University of Wisconsin-Madison to improve classroom instruction and teacher preparation. The Wisconsin Department of Public Instruction, the member colleges and universities, and local Wisconsin school systems operate to place numerous students in teacher internship programs each year. The participating student is a qualified undergraduate or graduate student in the process of earning a college degree and/or teacher certification. Admission to the program is based on: (1) evidence of teaching potential and professional commitment; (2) scholastic records; (3) letters of recommendation; (4) personal interview; (5) number of intern assignments available. The student is selected by the college or school of education at their university, and the local school district has the opportunity to interview and approve the intern for their specific program. The teacher intern earns between 8 and 15 credits for their one semester appointment in the school system. The student is licensed by the Wisconsin Department of Public Instruction with a temporary license available only to student participants in the Wisconsin Improvement Program. The license terminates at the end of the academic year.

The educational purposes of the program are to provide a clinical internship to give the student a realistic professional assignment which offers involvement in all phases of an educational program; to provide an opportunity for the teacher intern to relate theory to practice; and to test ideas unique to teaching and learning; to provide the teacher intern with a pre-service opportunity of being a member of a professional instructional team with extensive opportunities for observation, analysis and evaluation of both teaching and learning. The student works as a team member with the cooperating teacher who is an employee of the school district and who actively assists the student in the planning, execution and evaluation of his or her role as a teacher and intern. The student intern is also evaluated by a college or university supervisor who visits the school system throughout the semester and who consults with the intern and the cooperating teacher concerning the intern's progress. The supervisor directs the student intern to see the relationship between his or her classroom work on campus and his or her clinical experience. The final evaluation of the intern is the cooperative effort between the University supervisor and the cooperating teacher. This internship program fulfills the student teaching requirement for a teaching license required by Chapter PI 3 of the Wisconsin Administrative Code.

It has been our experience in the Wisconsin Improvement Program that employers are increasingly unwilling to participate in student intern programs where they run the risk of potential unemployment benefit liability of nearly half the total stipend given to the student for the period of internship. This problem is brought clearly into focus through a description of the Teacher Intern Program at the University of Wisconsin-Madison. However, the problem arises in other departments in which internships are used to provide educational opportunities as well.

Because of their exposure to the potential liability for unemployment compensation benefits, school districts have threatened to terminate their relationship with the Wisconsin Improvement Program. In several instances school boards have already taken affirmative action to terminate their relationship. The Wisconsin Improvement Program has enhanced both teacher education and the educational programs provide both teacher education for the institutions of higher education and the educational programs provided by the cooperating school districts. It is unfortunate indeed that this valuable Wisconsin program is threatened because the Congress failed to recognize that professions in addition to nursing and physician programs require clinical experiences or in the alternative because students reach the age of 22 before the completion of their college education.

The problem arises out of 26 U.S.C. s. 3306(c)(10)(C) which excludes from covered employment for employment benefits purposes: "service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers ...."

According to the Employment and Training Administration, U.S. Department of Labor, the exclusion reflects the trend in colleges and schools of combining work experience with formal classroom study. It also reflects the view that educational institutions would be more successful in persuading employers to participate in the educational program if the services performed are excluded from unemployment benefit liability.

Unfortunately the laudable goal of the legislation is thwarted by the limitation of the exclusion to those under the age of 22. This is an especially crucial restriction in a time when the enrollment trends of colleges and universities are toward older students. Well over 90 percent of the teacher interns placed are at or over 22 years of age.

The problem is complex; employers object to unemployment benefit liability as a result of participation in an educational program, especially since the educational institution determines the length of the internship. An internship program with students all under the age of 22 would be most desirable to them. However, under the Age Discrimination Act of 1975 colleges and universities may not discriminate in offering educational opportunities on the basis of age. In addition an internship can be most helpful to groups such as minorities and women of which the percentage above age 21 appears even larger than the statistics for the college population as a whole.

The Wisconsin state Bureau of Legal Affairs was contacted regarding this problem. The result, contained in a letter by the Deputy Director, stated that:

"(The) Department of Labor explanation of the provision was that it was intended to encourage employers to participate in cooperative educational plans by exempting wages paid to students in such plans from unemployment taxes. One can guess that the 22 year age limit related to the normal upper age limit of most undergraduates . . . The 22 year age limit applies to the period when the services are performed and not when benefits are claimed based on them. Teacher interning performed while a student is under twenty-two does not earn credits upon which a claim may be based after graduation, regardless of age at the time of the claim . . . It was more or less concluded that eliminating potential U.C. benefit eligibility based on intern teaching cannot be accomplished by interpretation under present law. Amending Wisconsin Law would pose conformity problems with the Federal Unemployment Law."

Pursuing the issue with the U.S. Department of Labor through Congressman Robert W. Kastenmeier's office, the response came that:

"Section 108.02(5) (j).1 of the Wisconsin law parallels section 3306(c)(10)(C) of the Internal Revenue Code. We have no information on why a limitation of age 22 was specified for exemption of service performed by a student in a work-study program. We assume that particular age was selected as the normal age for graduation from college."

Intern placements reflect an employer's commitment to assist the college or university in educating a student for a period of time and under conditions set by the college or university. The public policy behind unemployment benefits is not served by limiting the exclusion to students under the age of 22.

Representative Steven Gunderson has introduced H.R. 3253 to amend section 3306 (c)(10)(C) of the Internal Revenue Code. This bill, in its entirety is:

"To amend the Internal Revenue Code of 1954 with respect to the treatment for purposes of the unemployment tax of certain services performed by students.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

(a) subparagraph (C) of section 3306 (c) (10) of the Internal Revenue Code of 1954 (defining employment) is amended by striking out "under age 22".

(b) the amendment made by subsection (a) shall apply with respect to services performed after the date of the enactment of this Act. Nothing in section 3304 (a) (6) of the Internal Revenue Code of 1954 shall be construed to require the payment of compensation for weeks beginning after such date of enactment on the basis of services performed on or before such date of enactment if such services would not constitute employment (as defined in section 3306 (c) of the Internal Revenue Code of 1954) if the amendment made by subsection (a) applied to them."

In introducing this bill, Congressman Gunderson stated:

There can be no doubt that filing for unemployment benefits at the close of an educational experience such as an internship is an abuse of our unemployment compensation system. If this abuse is allowd to continue, the real losers will be our children and grandchildren as new teachers assume their jobs without the benefit of a classroom experience under the guidance of an experienced teacher.

I am today introducing a bill that will simply remove the under age 22 clause from section 3306(c)(10)(C) of the Internal Revenue Code to remedy this problem. Both the Internal Revenue Service and the Labor Department are at a loss to explain the rationale behind this age distinction.

Mr. Speaker, in this age of cuts in Government spending, it is nice to be able to point to a cut that will, indeed, enhance a program. This is just such a cut.

By striking the under age 22 clause, we can both put an end to improper expenditures on unemployment compensation and insure the availability of teaching internship programs to future generations of student teachers. (E 1826, Congressional Record—Extensions of Remarks, April 27, 1981)

All internships, not just those for individuals under the age of 22, should be excluded, since they are:

1. a required portion of the student's education;
2. a required portion of the certification standards for the profession;
3. for the clinical experience necessary to put the theory of the classroom into practice;
4. meaningful only when they take place in the actual professional environment;
5. provided on a temporary basis, the term of which is set by the institution of higher education or the crediting agency;
6. coordinated by the educational institution and supervised in order to provide the proper professional training;
7. supervised by a chartered school or university approved pursuant to state law.

It is our sincere hope that Congress acts deliberately and positively on this amendment. It is essential to a very important and positive program in Wisconsin.

Chairman FORD. The Chair would recognize Mr. Robert DuVal. We would be happy to include in the record your written statement.

STATEMENT OF ROBERT T. DU VAL, PRESIDENT, UNEMPLOYMENT COST CONTROL, INC.

Mr. DUVAL. Thank you, Mr. Chairman. Thank you, members of the committee, for giving me this opportunity to testify today.

My name is Robert T. DuVal. I am president of Unemployment Cost Control, Inc., located at 32 Broadway, in New York City.

We are a management consulting firm which advises employers, usually with 50 or more employees, with respect to matters concerning unemployment insurance and payroll taxes.

I would like to address two of the topics on today's agenda, the expansion of the student intern exclusion, and the pension offset provision which is currently in the Federal act.

I strongly favor the proposed change to exclude the earnings of interns over 21 years old from FUTA because this exclusion will foster a positive relationship between educational institutions and the business community.

It will do this by creating incentives for employers to participate with colleges in work study programs. A work-study program is an example of a situation where everybody wins.

Students get work experience and employers get bright young people who can be hired and trained at reduced cost.

Work-study internships can help break the cycle of "no experience, no job." I would also like to point out the current age ceiling in the exclusion seems to have been designed for a time when young people went to college directly after high school.

However, this is no longer as much the pattern today as it was. The exclusion will give an equal break to people who return to school later in life and who use internships to reenter the labor market or to start a new career, such as women, military veterans, and minorities.

In addition to the social benefits of expanding the exclusion, another reason for expansion is that internships do not create a true employer-employee relationship which should be the foundation for the payment of unemployment insurance taxes.

Usually income is a secondary consideration for the intern, a student whose primary purpose is education. This is true regardless of the student's age. It's been my experience that interns are not treated as employees in that performance standards are often relaxed because the emphasis is on training.

Also, a long-term employment is not the norm in an internship. Student interns often intend and are expected to move on after the internship has expired.

Now, with respect to the pension offset provision, I would like to say, first, that unemployment insurance historically was enacted for people who were out of work through no fault of their own.

This means it was designed to tide people over until they found other work. Unemployment insurance was not designed to supplement retirement payments or to serve as a form of pension.

Recognizing this purpose of unemployment insurance, New York State, for many years, had a provision which reduced the claimant's unemployment insurance benefits if he was receiving retirement payments from an employer who was also chargeable for his unemployment benefits even if the claimant was otherwise found eligible.

I believe this traditional view of unemployment insurance is proper and that an employer should not be asked to concurrently subsidize unemployment insurance benefits and retirement payments of any nature, including social security to which, in most cases, the employer has already contributed 50 percent.

I am very cognizant of the fact that there are many older people who depend upon these unemployment insurance benefits to supplement their income while they continue to work part-time.

Nevertheless, a person who is receiving retirement payments under the Social Security Act has indicated that he has not chosen to be a full participant in the labor market.

Although I recognize the financial hardships facing many elderly people, I do not feel this should fall on the already overburdened insurance trust which is financed solely by employers.

These needs should be met by an assessment against the general tax revenues which are financed by society as a whole.

Thank you, Mr. Chairman. May I answer any questions?

Chairman FORD. Thank you very much. I thank all four of you for appearing before the committee today.

At this time, the Chair will recognize Mr. Anthony.

Mr. ANTHONY. Thank you.

Chairman FORD. Mr. Anthony, excuse me for a moment. Dean Lutch, I will have to apologize for not being here while you gave your testimony. One of my colleagues on the committee, Mr. Jim Shannon, indicated to me that you would be here.

It was mentioned to me about 45 minutes ago on the House floor. He was trying to get over himself but was detained on another matter.

I would also like to recognize a person from my home district, Mary Haley, also with the Northeastern University School of Law, who is with you here and welcome her to the committee room.

Thank you.

Mr. Anthony.

Mr. ANTHONY. Thank you, Mr. Chairman.

Mr. Lutch, I don't know if you were here previously, but Mr. Gunderson came and testified about a bill that he has introduced that will basically do the same thing.

After I graduated from the University of Arkansas Law School and was a district attorney, they set up within the State of Arkansas, a program as you are operating at Northeastern.

I participated from the very beginning because I feel very strongly that that is the best way for us to start the practice of attorney.

Everybody kids us. We never get it perfect. We have to keep practicing all those years in order to become an attorney.

I think that is one of the problems with law school, that it is too academically oriented and not really oriented so that you know where the courthouse is.

That particular program actually does exactly that. I think it is very worthwhile. I can only tell you as one member of the subcommittee that anything that stands in the way of making those programs work, not only in the State of Arkansas, but in your State, you have my full support to try to restructure the Tax Code in such a way that it will take away those disincentives.

I really encourage you and applaud you for your work. I hope you keep it up and make that program even more worthwhile. I hope we can do our part in changing the law so that the policy in the Tax Code will not drive away what are considered to be a very good set of programs.

Chairman **Ford**. Mr. Bafalis.

Mr. **Bafalis**. No questions, Mr. Chairman.

Chairman **Ford**. Again, thank you.

That is the end of the hearing. I would like to thank each member of the subcommittee for participating today and conclude the hearings by saying that hopefully in the very near future, we will have a time set aside for markup sessions on some of the matters we have discussed.

The committee stands in recess.

[Whereupon, at 3:06 p.m., the hearing was adjourned.]

[The following was submitted for the record:]

STATEMENT OF HON. HOWELL HEFLIN, A U.S. SENATOR FROM THE STATE OF ALABAMA

Mr. Chairman, thank you for this opportunity to testify before your committee today in support of legislation to permanently exempt from federal unemployment taxes wages paid to fishing boat crew members who are determined to be self-employed for purposes of FICA and income tax withholding.

Mr. Chairman, this is an issue that has been around for quite a while and there have been a number of bills introduced in Congress to correct this inequity. In the House, Congressman Jack Edwards of Alabama introduced H.R. 3492 and in the Senate, Senator Mitchell and I introduced similar legislation. The substantive provisions of these bills were accepted as part of the economic recovery tax act of 1981 thereby exempting wages paid to fishing boat crew members, who are determined to be self-employed, from FUTA taxes. However, these provisions were made applicable to 1981 only. I am here today to speak in support of correcting this oversight and making permanent this exemption.

Under the Tax Reform Act of 1976, criteria were established under which certain crewmen would not be considered employees of the operator or owner of a fishing boat. Under the Act, shrimping boat crews are declared to be self-employed if the crew members are paid by receiving a share of the boat's catch or a share of the boat's proceeds from the sale and if the amount of the crew's share depends on the amount of the boat's catch. Furthermore, the act requires that the operating crew of the boat be made up of fewer than ten individuals. These criteria were made applicable for purposes of withholding federal tax and federal insurance contributions tax and thus exempts the employer—in this case, the boat owner.

The inequity which I have pointed out appears in the Internal Revenue Code as it pertains to the Federal Unemployment Tax Act. Although this tax is applicable to employers only, shrimpboat owners and operators find themselves paying unemployment taxes on those who are classified as self-employed. Though these are different taxes, there is no reason for inconsistency in exemptions. If a person is considered self-employed under the criteria of one, there is no reason why an employer should be required to pay unemployment tax on that self-employed individual. Exclusion from coverage under FICA should be extended to mean an exclusion from coverage under FUTA in this instance. Either a man is self-employed or he is not. It is inconsistent to declare a man self-employed under one act and claim that the same man is an employee under another act.

Mr. Chairman, the House and Senate conferees on the Economic Recovery Tax Act recognized the need to correct this inconsistency in the law by using the same criteria to determine self-employment of the crewmen for unemployment tax purposes as used to determine self-employment of the crewmen under the Tax Reform Act of 1976. However, the conferees did not go far enough and amended this law for one year only. I believe Congress should move quickly in order to make permanent this amendment to the Internal Revenue Code. Specifically, wages paid to a fishing boat crewman should be exempt from FUTA taxes under the following circumstances: First, the crewman does not receive any cash remuneration; second, the crewman receives a share of the boat's catch of fish or a share of the proceeds from the sale of the catch; third, the amount of the crewman's share depends on the amount of the boat's catch; and fourth, the operating crew of the boat is normally made up of fewer than ten individuals.

Mr. Chairman, I urge this committee to relieve these boat owners and operators from the excessive burden of paying unemployment tax on those crewmen defined as being self-employed under the Tax Reform Act of 1976 and bring some consistency to the enforcement of and compliance with these two laws. Employers need some relief from excessive government intervention and regulations. Permanent enactment of this proposal would be tax reform in its finest sense. Tax consistency and equity and fairness would be a welcome reform and a welcome relief.

Thank you, Mr. Chairman.

STATEMENT OF HON. JOSEPH P. ADDABBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman and members of the Subcommittee, as the unemployment rolls continue to swell, we must take the time to consider the impact of our policies on those who find themselves out of work and unable, for a time, to rejoin the work force. I commend you for this investigation into provisions of unemployment law which have been questioned by those of us who have introduced corrective legislation, and wish to direct your attention at this time to my own and similar bills which deal with the so-called "pension offset."

It did not take the Congress long after it originally passed Public Law 94-566 to realize what a great injustice we imposed on our retirees. The effective date of what would have been a full and complete pension offset was later amended to postpone this action from October 1, 1979 to March 31, 1980. Subsequent investigations indicated that the offset was not justified. The National Commission on Unemployment Compensation, after a thorough review did not recommend the offset, and this House has not traditionally taken a stringent view of curtailing unemployment benefits to pensioners. Nevertheless, the compromise accepted during consideration of Public Law 96-364, though restricting the offset to certain situations, maintains the basic injustices and increases the burdens for Social Security and Railroad retirees.

In support of a total repeal I hope the Subcommittee will review the testimony given by the Unemployment Compensation Commission's Chairman before you on September 21, 1979. At that time it was stressed that, "both pensions and unemployment insurance benefits represent deferred compensation for services rendered at an earlier date. The risks that are covered are not duplicative, and protection is appropriate for each." The Commission also stated that since most employees contribute to some kind of pension plan, the offset actually represents an inhibition to individual saving.

Opponents to repeal will claim that those receiving pensions are not truly part of the work force, and should not be eligible for UI. This statement holds no truth in this day and age. From my own experience, communications with constituents indicate that those who lost unemployment benefits due to the offset were those who had been in the work force for several years since retirement. Also, for the most part, the decision to work beyond retirement is not a matter of choice. Cost-of-living allowances have not always kept pace with inflation and other economic ills plaguing our country. Many private pensions offer no cost-of-living adjustment whatsoever.

Then, too, for our older Americans, health bills have skyrocketed, while coverage is decreasing and premiums increasing. The impact of rising health costs on them is far beyond that which hits the average American. Catastrophic illnesses, and the aches and pains of growing older demand more of a retiree's limited resources.

There are numerous examples—enough to fill a book. What is important is that today more and *more pensioners are working. Or, at least, they are trying to work.*

I say this because it is not always possible for our seniors to find the work they need to support themselves and their dependents. We have raised the compulsory retirement age and have eliminated it for the Federal government. Yet, according to the Equal Employment Opportunity Commission, age discrimination cases are experiencing a drastic rise. Even without the possibility of discrimination, retirees are often recent hires—they will be the first to go during a lay-off.

It is certainly no fault of theirs that, as some will claim, the UI system does not or cannot enforce the availability for work requirement. This is the fault of the system, not of the retirees. Why should they bear this burden alone while the complaint applies equally to each and every person on the unemployment rolls. The fact that they receive a pension, a stipend well-earned by previous work experience, should not be cause to deny them a benefit we have seen fit to give our citizens in time of need.

If we are worried about fraud, then our mechanisms for control need to be tightened. If we are worried that the combined value of UI, pensions and other retirement benefits exceed the retiree's previous after-tax and other wages, then surely this Congress can devise a simple formula to compute maximum benefits, albeit while giving full consideration to inflation, cost-of-living adjustments not received, and other factors that may have kept the previous after-tax wage rate at a level lower than would normally have been expected. I frankly see no need for the latter if the former is well taken care of; but such a system would be more just than one which offsets directly and thereby limits the little current income received.

When we adopted the current law, the provision which calls for an offset only in cases where the base employer is the one providing the retirement pay, some hardship cases where eased. Limiting the offset to this instance does not, however, help the recent voluntary or involuntary retiree who must work and cannot find a ready employer. It helps only those lucky enough to find other work. And it is the recent retiree who may be in the most need of immediate assistance.

At this stage, I would like to point out that recent budget cuts and changes in eligibility requirements, past and proposed, are, and will likely further erode the programs and services available to our senior retirees. Help that may have been available in the past can no longer be taken for granted. The alternatives, other than work, are, most regrettably disappearing. And if they must work, then we should not deny them benefits available to others.

I would now like to address the very special case concerning Social Security and Railroad Retirement Systems recipients. Public Law 96-364, as it stands, does these groups an even greater disservice than it does to the retiree receiving a private pension only. These recipients have been singled out for a further offset—and that is the only way this unconscionable penalty can be looked at—for no other reason than that they contributed to a government-run program. Since most workers, other than Federal employees, pay into one system or the other, at each and every job they take, there is never a base period employer who did not contribute to the pension. Therefore, there is never a chance that these retirement benefits will not be offset. Though we have allowed the States to take into consideration the employee's contribution to his or her own retirement pay, we have not required them to do so. Most of all, however, this offset is is downright ridiculous.

This policy fails because it has no firm basis, and does not account for comparative differences among retirees. For instance, a person earning a minimum social security benefit with no other retirement income will find half of his or her pension offset against UI benefits in States that allow for employee contributions. Yet, another senior earning a large private pension and no or little social security, will find that he or she can collect the full amount of UI (minus a small Social Security offset if applicable) for which he or she is eligible if he or she manages to work for an employer other than the one who pays the pension. We may thus allow full UI to someone with over $20,000 in pension and other retirement income while disallowing at least part to someone on Social Security with less than $1,500 per annum! Mr. Chairman, this is disgraceful, and it simply makes no sense.

For one thing, we are not helping those who need help the most. For another, this policy totally disregards the fact that in instances where the retiree has worked for different employers, it is the retiree who has paid the most into the system and not either of the employers who only paid social security during the time the employee or retiree worked for that employer. Ironically, it will likely be that the base employer in such an instance contributed the least. And yet we still apply the full Social Security or Railroad Retirement offset allowed.

These injustices should not continue. I urge you to give full consideration to these inequities and restore a basic fairness to the UI System by allowing retirees to keep the pensions and UI benefits they have worked hard to earn, and by eliminating arbitrary distinctions among the various groups.

STATEMENT OF HON. THOMAS J. DOWNEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, thank you for the opportunity to testify on HR 1902, my bill to repeal the offset requirements of Public Law 96-364 which deny unemployment benefits to Social Security and Railroad Retirement beneficiaries.

There are two important issues involved in this legislation. The first concerns the policy of singling out specific groups of people for detrimental treatment as has been done by using the "base period employer" provision to determine eligibility. The second issue is the way the Unemployment Insurance Trust funds have been manipulated since they became part of the unified federal budget.

To understand how these offset provisions discriminate against Social Security and Railroad retirees you must first understand what a base period employer is, and why this is such an important concept for all retirees. When Public Law 96-364 was passed in 1980, it contained a section which granted relief to persons who received pensions from one employer and then went back to work for another employer. The hitch was that the second employer could not be contributing to the same pension plan of the first employer. As an example, John Smith worked for the Postal Service for 35 years and retired when he was 65. Shortly thereafter, he found that he needed to supplement his retirement income and was able to get a job with Federal Express, using his same skills. Three years later, he was laid off by Federal Express and he was able to collect unemployment benefits. But his next door neighbor, Al Sherman, who had worked for a small manufacturing firm found that because he had returned to work for a company that paid Social Security taxes, he was not eligible to collect unemployment checks when they laid him off. Mr. Sherman was unfortunately retired on Social Security. Same pension plan, so no unemployment. Where can people like Al Sherman go to find a new employer who did not pay into their retirement system?

The answer is obvious. Our citizens are resourceful, and when they all become aware of the effects of the offset provision as they decide to go back to work, they will no doubt seek work in the underground economy—thereby relieving the federal government of the onerous burden of collecting taxes on their earnings altogether. The explanation of the first issue illustrates who is hurt by this offset provision. The second issue explains why it came about.

In 1935, when Congress passed the Social Security Act it also set up the Unemployment Insurance Program, creating separate trust funds for each. Years passed, and this federal and state partnership flourished with the states collecting taxes from employers and the federal government kicking in a small amount to administer the program. In 1968, the UI trust fund was incorporated into the unified budget and it was then that Congress got a close look at the amounts in the funds as they related to total federal revenues and spending. There was a surplus of money then, and this surplus was used to establish the extended benefits program in 1971. As luck would have it, along came the '74-75 recession and the trust funds were forced to pay unemployment benefits to a large out-of-work population who also became entitled to an additional extended federal benefit of 26 weeks of assistance. It was the recession, not the retirees, that caused the UI trust funds to run down. Because of the need, in some cases, to pay 52 weeks of benefits, the states were forced to borrow to meet their obligations, and some of them are still paying these loans back.

In 1976, when Congress looked at the state of the UI trust funds after the recession, it found many states were not living up to their obligation to run a solvent program. Instead of attacking the cause of their insolvency, an offset provision was quickly passed in the Senate and reluctantly agreed to by the House. But they also agreed to look more closely at this provision, and this agreement led to postponing the implementation of PL 94-566 until 1980.

By that time, some sort of repeal, including a bill of my own, had been in the works for awhile, but never quite made it to conference. At the last minute, an amendment to partially repeal the offset provision was added to and passed in the ERISA bill. That is the offset requirement we have today.

The question remains—how much will it cost us to exempt Social Security and Railroad people from the offset?

Estimates are running at about $400 million. But this will not have any long-range effect on the unified federal budget. Because the states will have to make a compensating decrease in UI expenditures and/or an increase in unemployment taxes to meet their individual needs no federal cost will be incurred.

In fact, even before Congress passed the offset provision many states, according to the needs of their own populations, had their own offset provisions. And that is how it should be, because in the final analysis, these are state programs which should be designed to meet individual state needs.

STATEMENT OF HON. JACK EDWARDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. Chairman, I am pleased to have this opportunity to testify before your subcommittee in support of the exclusion of certain fishermen from the Federal Unemployment Tax Act. I have introduced along with Congressman William Hughes legislation, H.R. 3492, to accomplish this purpose.

Senators Heflin and Mitchell introduced similar bills in the Senate and their provisions were included in the Senate version of the Economic Recovery Tax Act. I was delighted that the House conferees agreed to apply the exclusion for 1981 and that this subcommittee is now reviewing the issue.

This legislation would exempt labor performed on small fishing boats (defined as those with crews numbering less than ten) from coverage under the Federal Unemployment Tax Act, if the crew members are paid by a share of the boat's catch or a share of the proceeds of the catch, and if the amount of pay received depends entirely on the amount of the boat's catch.

This is not a new issue. The Tax Reform Act of 1976 clarified the status of independent fishermen for purposes of federal income tax and social security reporting. Under that Act, crew members on boats with fewer than ten crewmen are treated as self-employed for income tax and social security purposes if their sole pay is a share of the catch or the proceeds from the catch. The 1976 Act also requires boat operators to report the weight distributed to each crewman, or in cases of distributions of the proceeds of a catch, the dollar amount distributed to each crewman.

Under prior law, these crewmen had been treated as regular employees for social security and income tax purposes, and the reason for the changes made by the 1976 Tax Reform Act was to reduce the burdensome reporting requirements for boat operators. When crewmen were treated as employees, there were many problems with the income tax and social security reporting and collecting because crewmen often work on different boats from day to day, and because the type of pay received varies from a regular wage to a portion of the catch itself to a portion of the money received from the catch. The administrative problems were enormous and it was generally agreed that these fishermen on small boats are actually independent contractors, rather than employees, and should be treated as self-employed day laborers. Unfortunately, since the 1976 law failed to address the unemployment tax as well, the paperwork and administrative problems are still nearly as heavy for boat operators as they were before the Tax Reform Act was enacted. The omission of the unemployment compensation tax in the 1976 provisions has also led to some confusion on the part of fishermen and their families who were covered by the changes included in the 1976 Act.

The problems involved in determining independent contractor status are extremely complicated, and these issues have been studied time and time again in recent years. However, in the case of independent fishermen working on these small fishing boats, the determination has already been made by the Congress that they are self-employed, yet the inconsistency in their tax treatment is defeating the purpose of that decision. For those reasons, I would urge this Committee to take early and favorable action on this legislation.

Thank you for your consideration.

STATEMENT BY HON. MARJORIE S. HOLT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. Chairman: I thank the subcommittee for consideration of H.R. 3576, which is designed to correct a very unfortunate situation in which commercial fishermen are liable for the Federal unemployment compensation tax for crew members that are self-employed independent contractors.

The legislation before you is designed to exempt commercial fishermen from the Federal Unemployment Compensation Tax Act when crew members are self-employed as defined for withholding of Social Security and income taxes.

It is important to understand the arrangements under which many fishing boats are manned. The boats frequently operate with pick-up crews or crews composed of families of the boat owners, and it is common for them to be paid only as a share of the catch or the proceeds from sale of the catch.

Under current circumstances, the commercial fisherman who has a crew of independent contractors is not liable for withholding Social Security and income taxes, but must pay the unemployment compensation tax. My legislation would apply the same definition of self-employment for unemployment compensation as we apply for Social Security and income taxation.

Oddly enough, the Congress has already enacted this legislation as part of the Economic Recovery Tax Act of 1981, but it is effective only for this one year. This temporary relief for commercial fishermen was added to Public Law 97-34 through a Senate amendment that was sustained in conference.

Essentially, what I am asking you today is to repeal paragraph (b) of Section 822 of Public Law 97-34. You would thereby make the other provisions of Section 822 a permanent part of the tax code.

I should remind you that the Federal Unemployment Compensation Tax Act already provides an exemption for commercial fishermen operating boats under 10 tons. It recognizes that most small-boat fishermen have self-employed crews, often seasonal workers whose compensation is based on shares of catches.

It should be obvious to this subcommittee that the 10-ton limit is arbitrary and has no direct relationship to the actual employment status of crew members. It also does not recognize the realities of the fishing industry, in which many boats larger than 10 tons have crews working in the status of independent contractors. Approximately 40 percent of the nation's fishing vessels fall within the 10- to 15-ton range.

So I am asking you to improve the existing law to make it conform to real conditions and to correct an injustice imposed on many commercial fishermen in our country.

Thank you for your consideration.

STATEMENT OF HON. DONALD J. MITCHELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, Members of the Committee: I wish to thank the Committee for granting me the opportunity to present this statement on behalf of H.R. 1759, legislation I introduced to provide retroactive payment of unemployment benefits to pensioners denied compensation as a result of the "pension offset" provision of the Omnibus Unemployment Insurance and Disability Benefits reform of 1976.

Many unemployed individuals have been unintentionally and unnecessarily deprived of the full benefits to which they were entitled because of a law designed to prevent fraud and abuse in the unemployment insurance system.

When the unintended reduction in benefits resulting from the pension offset provision scheduled to go into effect on April 1, 1980 was recognized, the House of Representatives passed a measure to postpone and revise the provision. However, the Senate did not act in time to prevent the provision from taking effect. Although the Multiemployer Pension Plan Amendments Act of 1980 was later agreed upon and signed in September to address some of the inequities, many unemployed pensioners were denied benefits in the interim period.

H.R. 1759 seeks to address the situation created by the denial of unemployment compensation to such individuals during the period in question. Retroactive payment should be provided in such cases. I believe that those who have worked deserve to receive their appropriate benefits. I, therefore, urge the Committee to favorably consider H.R. 1759 and allow Congress to rectify this unjust situation.

STATEMENT OF HON. RICHARD L. OTTINGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I am pleased that this subcommittee is looking into unemployment issues, including the present law which requires the reduction of unemployment compensation benefits by the amount of certain retirement benefits. The present offset requirement is cruel and unfair and is causing great financial hardship for older Americans around the country—it must be repealed immediately.

On December 3, 1980 and again on January 27, 1981, I introduced legislation (H.R. 1429) to eliminate the pension offset which now requires states to deduct retirement benefits from unemployment benefits. Forty-four Members have cosponsored this bill. I understand several groups have filed suit challenging the legality of the unemployment compensation offset law. I wholeheartedly support their efforts, but feel it is incumbent on Congress to take action to ensure that this injustice is eliminated by repealing the pension offset provision.

I have opposed this offset since it was included in the comprehensive Unemployment Compensation Reform Act of 1976. I believe this provision, which was added by the Senate, was enacted without careful consideration of its consequences. The effective date of the requirement was delayed until 1979, and later postponed until April 1, 1980, in order to allow time for the National Commission on Unemployment Compensation to study the issue and for Congress to act in light of the Commission's findings. The Commission unanimously recommended repeal of the offset; unfortunately, to date, Congress has not followed this recommendation.

Effective April 1, 1980, Federal law required all states to reduce a person's unemployment compensation benefits, dollar-for-dollar, by the amount of any governmental or private pension or retirement pay received by the individual. Last fall, we modified the provision to reduce the harmful effects of the law, by allowing states to disregard a pension that is based on work performed prior to the employment upon which his or her eligibility for unemployment is based. In addition, states are allowed to reduce the amount of the offset by an amount consistent with any contribution the employee made toward the pension. This allows States to limit the offset to one-half of the amount of a social security pension received by an individual who qualifies for unemployment benefits.

While these changes mean that fewer retirees will be receiving reduced unemployment benefits, they do not go far enough. Persons in the greatest need—those whose only retirement income is Social Security or Railroad Retirement and who must remain in the workforce because of the inadequacy of his or her retirement benefits—are still subjected to the offset with regard to at least 50 percent of their benefits. While those workers who have other pensions receive full unemployment benefits during periods in which they are involuntarily out of work. Corrective action is desperately needed.

The key issue is: should an individual who is involuntarily unemployed and looking for work be denied the same unemployment benefits as those received by other job seekers simply because that individual has earned certain retirement benefits: Clearly, the answer is "No." I find it appalling that Congress singled out retirement income from all other income to reduce or eliminate unemployment benefits. Thousands of retirees are suffering, barely able to make ends meet as inflation eats up their pensions. They have a right to unemployment benefits and we must recognize and ensure that right.

I commend the Subcommittee for looking into this issue and hope that you will take action to repeal the pension offset provision at the earliest possible time.

STATEMENT OF HON. TOM RAILSBACK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman and Members of this Committee: I appreciate this opportunity to make this statement to the Committee on an issue of great importance to the men and women who have honorably served our country in the Armed Services, and ask that you give serious consideration to correcting an inequity created by the Omnibus Reconciliation Act of 1981.

When a young man or woman enters into an enlistment contract for a specified number of years, renewal of this contract is at the option of the government and the individual concerned. Public Law 97-35 denies unemployment compensation for ex-service-personnel who had the opportunity to reenlist, but who decided not to. However, should that individual be released from duty because the service feels that he/she is not suited for a military career, the same law allows the released individual to collect unemployment compensation.

The United States has always been proud of its "civilian" armed services. It has been an integral part of our history. The decision not to reenlist in the service is not comparable to a decision to leave private sector employment. Most service personnel regard military service as a temporary career. Private sector employees generally have the opportunity to seek a new employer before voluntarily leaving a job. Few employees leave an employer without having secured other employment. Those who do leave a job voluntarily do not leave the area where they last worked. Ideally, discharged service personnel leave the service and find a job in a brief period of time. That is not always possible in the Northeast or the Midwest. In these regions it takes longer to find a job than in some of the booming areas of our country. I believe that we should give these honorably discharged personnel a helping hand when they come home to find a job.

I have joined several other Members of Congress in cosponsoring H.R. 4686, that basically reflects the intent of the original House reconciliation language relating to unemployment compensation benefits for ex-servicemen: The provisions of the bill are:

(1) To fall within the scope of this bill, military personnel must be in the United States Armed Service for 730 days continuously. This is equal to the minimum one term of duty.

(2) Unemployment compensation benefits would be available for military personnel for a fixed 5-week period after being discharged. This allows time for adjustment and recognizes the availability of severance pay and discharge benefits.

(3) Unemployment compensation benefits for military personnel would be paid for a maximum of 13 times the weekly benefit amount or 13 weeks.

Although there are other bills now pending before the Subcommittee, I believe that the bill that I have cosponsored is a compromise between the inequity in the present law and an effort to trim the costs of the previous system.

I am totally convinced that the military personnel of our nation deserves access to unemployment compensation benefits.

STATEMENT OF HON. J KENNETH ROBINSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Chairman, I appreciate this opportunity to submit a short statement for the consideration of the Subcommittee in the matter of the desirability of continuing the existing exclusion of certain alien farm workers from the Federal Unemployment Tax Act (FUTA), which exclusion, as set forth in Section 3306(c)(1)(B) of the Internal Revenue Code, is scheduled to expire on January 1, 1982.

This is a relatively simple matter which I hope the Subcommittee may agree could be dealt with adequately and equitably at this time by an extension, on the order of two years, of the existing exclusion.

On dispassionate examination, I believe it becomes apparent that this exclusion does not operate to the disadvantage of farm workers intended to be protected by the unemployment compensation program, or who might, absent the exclusion, have any reasonable need for coverage or opportunity to qualify for it.

In this connection, I should like to emphasize that we are not talking here about so-called "migrant" farm workers in the domestic labor force. The exclusion is directed toward alien farm workers imported legally for short-term harvest labor—and imported solely because sufficient qualified and willing labor is not available, at harvest time in a given year, from within the domestic labor force. As the Subcommittee is aware, such temporary farm workers are not permitted to be imported, under the Immigration and Nationality Act, except on certification by the Department of Labor to the Attorney General that their importation and temporary employment will not disadvantage the employment opportunities of qualified and available workers in the domestic labor force.

Additionally, employers of such alien temporary workers are required to guarantee wage rates—also by determination of the Department of Labor—substantially above the federal minimum wage, in order further to insure that domestic workers not be disadvantaged.

These alien workers are brought to the United States for fixed terms to assist in the harvest season. They come to our country with the expectation that they may be able to earn a sufficient amount by their labors here to take home a reserve for future living expenses in their homeland.

They do not expect to become members of the domestic labor force at the completion of the harvest season. They expect to go home. This is not only a matter of their own understanding but also a matter of the terms under which they have been permitted admission to this country pursuant to the Immigation and Nationality Act.

If employers are required to deduct from the pay of such employees amounts sufficient to comply with the Federal Unemployment Tax Act, and to make payments to the Internal Revenue Service for the accounts of such employees, the results are an unneeded accounting and payment burden on these employers and, at the same time, a revenue windfall for the unemployment compensation program.

The affected employees are not expected to be—and, indeed, do not become under the legal operation of the temporary agricultural importation—potential beneficiaries of, or charges against, this program, which is funded by a specific tax. Accordingly, the exclusion represents simply a logical and equitable management measure with respect to this limited purpose tax and the program funded by it.

I urge the Subcommittee to approve a continuation of the exemption.

STATEMENT OF HON. ROBERT A. ROE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. Chairman, I applaud the subcommittee for its work in dealing with the highly important unemployment compensation issues that will be considered by Congress.

I welcome the opportunity to stress the need for the repeal of the pension offset requirement, which I can only describe as one of the greatest inequities ever perpetrated on the American worker.

That cruel and unfair provision is creating untold economic hardships for thousands of workers in my state of New Jersey and around the nation. Its repeal must be given a high priority by this Congress. The legislation I have introduced, H.R. 531, would accomplish that task by completely eliminating the offset with respect to Social Security and other retirement benefits.

Unfortunately, the fact of the matter is that most of today's retirement income programs are not adequate enough to insure a comfortable life for our older Americans. Many of our so-called retirement workers, unable to make ends meet on their pension incomes, are being forced to re-enter the job market.

Because of our current economic situation, later life employment becomes necessary to supplement inadequate social security and other pension benefits. I might add that the cutbacks in benefits for social security recipients being sought by the current administration will only worsen that situation.

What we are faced with then is the total misconception that recipients of retirement income are no longer members of the nation's work force.

The pension offset provision assumes this without regard to the amount of retirement income received.

The offset provision also repudiates the principles under which the Federal-State unemployment insurance program is based. Unemployment compensation is part of the nation's social insurance program, it is not a welfare handout. Benefit levels are not based on need but on work experience.

The offset certainly does not take into account retirees, forced to return to work to supplement retirement incomes, who find themselves unemployed because of corporate decisions to close an office or plant. Like their younger colleagues, the older worker must now hit the streets looking for a new job. But while the younger worker will receive full unemployment compensation benefits, the senior citizen will be punished by the offset provision because he may be receiving pension benefits.

I believe it is disgraceful that we have enacted into federal law such a blatant incentive to age discrimination as the unemployment insurance retirement income offset.

The offset provision, which I have totally opposed since its inception, is a direct violation of the rights of older Americans who have worked all their lives, paying into private pension plans and the unemployment insurance fund and who are now trying to make ends meet on a meager retirement income.

They have earned the right to full social security benefits, private pensions or government retirement benefits. All those sources of income have been used to offset unemployment benefits. What a cruel reward to those who have devoted their lives to making America the great nation it is today.

On April 1, 1980, federal law went into effect requiring all states to reduce a person's unemployment compensation benefits, dollar for dollar, by the amount of any governmental or private pension or retirement pay received by that individual.

In the Fall of 1980, Congress modified that law allowing states to limit the offset to one-half of the amount of a social security pension received by an individual who qualifies for unemployment benefits.

While those actions reduced the impact of the offset, further congressional action is needed to completely eliminate the offset. All hardworking Americans, regardless of age, have a right to unemployment benefits. I urge the members of this subcommittee to give the offset repeal legislation I have introduced their full support and immediate attention.

STATEMENT OF HON. WILLIAM C. WAMPLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Chairman, I would like to submit to the Subcommittee a statement for consideration pertaining to the October 28 hearing on the desirability of continuing the existing exclusion of certain alien workers from the Federal Unemployment Tax

Act. Registered in Section 306(c)(1)(B) of the Internal Revenue Code Service, this exclusion is scheduled to expire on January 1, 1982.

I would like to associate myself with the remarks of the Honorable J. Kenneth Robinson in this matter and ask that an extension of the existing exclusion be granted for two years.

There are several points, in this regard, which I would like to offer for consideration. In the first instance, it is illogical and unfair to require employers to pay taxes for a social program, the benefits of which will not accrue to those workers for whom the employers are taxed.

In addition, the use of these temporary foreign workers (H-2 workers) is already more costly than would be the use of domestic workers. This higher cost, a safeguard against employers disadvantaging domestic workers, would not be necessary if sufficient, qualified, and willing labor were available in the domestic force. With costs already inflated, and responsibility for insufficient domestic labor not with the employers, why pass on additional costs to the employers?

Furthermore, a social security program of sorts with the West Indies governments is already contributed to by U.S. employers of West Indies H-2 workers. the loss of this exemption would force employers to pay into two social programs, both here and abroad, yet the workers will still benefit only from such programs in their home islands.

Most importantly, the existing exclusion does not jeopardize the benefits guaranteed to those farm laborers who are intended to be protected by the unemployment compensation program.

Keeping in mind the specific and temporary nature of the aliens work, their role as a necessary substitute for unavailable domestic labor, and the already inflated costs for employers to import this labor, I hope this Subcommittee will approve a continuation of this exemption.

STATEMENT OF HON. RICHARD C. WHITE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman and Members, I thank you for the opportunity to testify before this Subcommittee and appreciate your prompt consideration of H.R. 4573 which I introduced last month out of deep concern for present and future personnel in our armed services. This legislation relates to the denial of unemployment benefits to ex-service members who had the opportunity to re-enlist but chose to voluntarily leave the service. It modifies present law as enacted by Congress in the Omnibus Budget Reconciliation Act of 1981 and seeks to correct the inequities created by this Act. You will note that two of my colleagues have also responded to this area of concern by introducing similar and related legislation.

I would like to briefly outline the development of this problem situation. Under former law, federal unemployment benefits were provided to former military personnel if they met certain eligibility requirements of the state in which they applied and if they had served 365 or more continuous days of active duty and were separated from the military under other than dishonorable conditions. Unlike other workers whom many states disqualify for voluntarily leaving a job, service members were eligible for unemployment benefits for leaving the military at the end of a term of enlistment.

Recent changes in the law, however, have eliminated unemployment compensation for those who voluntarily quit military service at the end of a term of enlistment and are eligible to re-enlist. Proponents of Section 2405 of the Budget Reconciliation Act of 1981 argued that these individuals had voluntarily enlisted in an all-volunteer force and should therefore be treated like civilians who voluntarily accept and quit a job. In the process of saving dollars, equity and common sense were not considered. This change in the law has the anomalous effect of rewarding those persons who are not qualified to re-enlist in our military services and punishing those who have honorably and capably served our country.

There are other problems with the present approach as well. First, it drastically impacts the number of households which might be eligible for food stamps. Second, it places the service member who may be quite a distance from his home at a considerable disadvantage in assessing the labor market compared to the local civilian. Generally speaking, it serves to impede rather than assist the readjustment process from the military to the civilian sector.

H.R. 4573 reintroduces for Congressional consideration the House language of the Budget Reconciliation Act which was not adopted in Conference Committee. It appears to be a reasonable response to critics of unemployment benefits for ex-service members, yet one which represents a reduction in spending compared to the former law. In short, it first provides that a person must have 730 days of continuous military service in order to qualify as employment for unemployment compensation purposes. Second, it requires a four-week waiting period between the week in which an individual is separated from the military and the week in which he or she first becomes entitled to compensation. And finally, it limits an eligible ex-service member's total entitlement to no more than 13 times the weekly benefit amount payable. Note that this language increases the eligibility requirements compared to the former law while encouraging a speedy transfer to the civilian labor sector.

I sincerely believe that this legislation will serve the best interests of our veterans and seems to be a workable middle-ground upon which proponents and opponents of this concept can agree. I urge that his Subcommittee take favorable action on this proposal for the above-mentioned reasons.

STATEMENT OF DONALD L. HARLOW, EXECUTIVE DIRECTOR, AIR FORCE SERGEANTS ASSOCIATION

Mr. Chairman, distinguished members of the subcommittee: I am Donald L. Harlow, Executive Director of the Air Force Sergeants Association and the primary spokesman on legislative matters, representing 157,000 members of our association and their dependents.

Due to some discriminatory provisions contained in the present federal-state unemployment compensation program, directly affecting members of the armed services, especially the lower paid enlisted people, I am grateful for this opportunity to present our testimony on their behalf.

THE FIRST TERM AIRMEN

I would first address the provision of the law which states, "Disqualified from any unemployment compensation are those who voluntarily leave military service at the end of their enlistment term and are eligible to reenlist." This provision became effective on 1 July 1981.

Even though the majority of those young men and women entering the United States Air Force successfully complete their initial obligation under honorable conditions, many are denied reenlistment. The composition of the first-term enlisted force and that of the career force is based on mission requirements and the retention rate of those supervisors, middle managers and specialists needed in the career force. The average percentage mix of first-term enlistees and the career force is 56 percent career and 44 percent first-term. Therefore, many of our young people, even though qualified, are denied the opportunity to reenlist.

While it is acknowledged that most young people who leave the Air Force after their initial enlistment possess experience and knowledge of a skill convertible to civilian business and industry, it is not always possible for such individuals to find immediate employment. To deny these young people unemployment compensation is grossly unfair.

Another consideration must be given to the individual's own desires and career intentions. While many did enter the Air Force to either learn a skill, gain experience or to fulfill their obligation to their country, not all of them find service life to be that attractive as a career. If, after discharge, they find it difficult to adjust and seek their niche in life soon thereafter, eligibility for unemployment compensation may be their only source of income during the adjustment period. For those enlisted members who took on family responsibilities during their initial enlistment, being denied unemployment compensation could be devastating and set them back financially for years to come.

It is significant to point out at this time, as we have done in previous testimonies, the United States Air Force programs are designed to enhance job knowledge, skill and experience for all young enlistees. It is to the benefit of the Air Force to provide the best of training possible and to provide as much opportunity for promotion and personal growth, thus encouraging them to select our service as a career.

For those young people who cannot or do not reenlist, our service has hopefully prepared them to become meaningfully employed, contribute to the community selected as their residence, and become successful in their chosen civilian career. During the transition period, eligibility for unemployment compensation is paramount.

THE RETIREE

The provision of the law that precludes those individuals who retire from military service, civil service or industry from drawing unemployment compensation based on their receipt of an annuity may be justified in most cases. It is also understood why an individual in receipt of a retired annuity is ineligible to receive unemployment compensation, as such payment would be from the same base employer.

However, for some retiring from the military, this provision of the law can be a real financial strain on those enlisted people having to support a family on a retirement pay far from adequate in today's inflated economy.

Some of our people, who complete 20 years of honorable service, are not permitted to reenlist for continued service due to a program called "Top Cap." Specifically, to provide adequate promotional opportunity within our enlisted corps, those individuals who do not reach a specific grade at a pre-determined service point, are denied continued service and are placed, involuntarily, on the retired rolls.

If, for instance, a Staff Sergeant (E-5) is not promoted to the next grade (E-6) prior to reaching the 20 year service point, he or she must retire. A Technical Sergeant (E-6) who fails to be promoted to Master Sergeant (E-7) by the 23 year service point, must also retire, etc, Without the "Top Cap" program, there would be stagnation within the career NCO grades, thus discouraging highly qualified first term enlisted people from entering the career force.

The enlisted career service member who voluntarily retires, usually is prepared for the transition from their unique military lifestyle to that of a civilian. A job may already be lined up to assist the individual in supplementing his or her retired pay, thus enabling them to purchse a home, provide an opportunity for their children to pursue higher educational opportunities, or to even pursue their own educational opportunities that were necessarily delayed during their military career.

However, once an individual military retiree becomes employed and works the required amount of time to become eligible for unemployment compensation from the new employer, it is grossly unfair for the individual states to deny payment of such compensation based on his or her receipt of an earned retirement annuity. The individual has, since retirement from the military service, contributed to the local community and the company with which employed. Federal, state and local taxes have been paid based on his or her total income. Furthermore, the employer has, by law, contributed to the unemployment fund on behalf of the employee. In this respect, we question the propriety of requiring an employer to pay into the unemployment fund for any individual employee, knowing full well he or she will never reap the benefit for which the contribution is intended.

Mr. Chairman, the current law denying unemployment compensation to our people who serve in our armed forces must be changed, less we destroy all initiative for them to seek meaningful employment and contribute to the economy of our nation. It appears that those who want to work and take their rightful place in society are the ones to be targeted to bear the burden for those parasitic members of society who avoid work and live off every government handout available.

In closing, we are pleased to learn that much of the news media throughout the country are sympathetic to our cause. We were especially pleased with the article (attached) which appeared in the October 8, 1981, edition of the Washington Post.

Thank you for the opportunity of testifying on this important issue and I now stand ready to respond to any questions you may pose.

[From the Washington Post, Oct. 8, 1981]

MOST WHO QUIT MILITARY NOW DENIED JOBLESS PAY

(By Tom Vesey, Washington Post Staff Writer)

Because of a little-publicized regulation change, people who voluntarily left military service after July 1 are not eligible for unemployment pay.

Many former service members, who did not hear of the change until they were refused benefits, say an unfair situation has been created because those the military did not want to keep are still eligible.

In Maryland, where last year 2,709 persons received unemployment pay to tide them over while they looked for a civilian job, unemployment officials estimate that the new rules will reduce by 60 percent the number of recently separated men and women who can draw benefits. Nationally, it means that about 170,000 fewer veterans will draw jobless pay in fiscal 1982, according to the Department of Labor.

The change was made in order to reduce annual military-related unemployment costs from $325 million to $38 million, said Phil Mason, a spokesman for Labor's Employment and Training Administration. "The Reagan administration is seeking easy ways to reduce spending," he said. "The rationale is that this is a volunteer army." Those who choose to leave service are considered no different from civilians who voluntarily leave their jobs, and are therefore ineligible for unemployment benefits, he explained.

"On a philosophical basis, this is a volunteer army and everybody's happy," Mason said.

But he told of several calls from ex-service members who complained they were being penalized while the "dirtballs" who did not have the option of reenlistment are eligible for jobless pay. "It's a piece of irony," he said. "There are military people that are ineligible for reenlistment [for reasons such as] ineptitude and gross overweight," Mason said. Such people, he said, who are refused reenlistment or asked not to reenlist, are eligible for unemployment benefits. Those who receive dishonorable discharges, however, are ineligible, he added.

"The only thing I heard about it was when I went to unemployment," said Gary Powell, a former Navy pilot who left the service in August, received unemployment checks for two weeks but then was told he would get no more.

Powell said the unemployment benefits are needed because it is hard to find a job before leaving the military. "Say you're in the Philippines," he said. "You can't very well fly back to New York and interview for a job with Bristol Myers—even if you had the time and could afford it.

"I can speak for the pilots," Powell said. "Many of them in the past had looked into unemployment because the airlines don't like to even look at you until you have your discharge."

And finding a job with an airline, he said, usually takes sometime.

Earl Reeves, director of the veterans unit of the Prince George's Employment Security office and a Navy veteran himself, said between 30 and 40 ex-service members apply for unemployment pay each month at his office. For many of these applicants, he said, unemployment checks are "a matter of survival."

"My personal opinion is that those who are keeping their noses clean are getting penalized," he said, while those with records of "fighting, use of drugs, homosexuality" while in the service can get unemployment pay when their enlistments are up.

The picture is similar in Montgomery County, where Carlos Garza, veterans representative with Montgomery's employment service office in Wheaton, handles about 2,000 applications in an average year. Garza estimated that under the new rules, approximately 80 percent of those applicants will be denied benefits. He also was critical of the change.

"On the surface," he said, "it appears to be a parallel situation, but the civilian [who has quit a job] is in his own environment while the military person may not be. Quite often the person leaving the service does not have the same access to the job market. He might be in Korea or Greenland when his enlistment is up."

Felipe Lespier Rivera, of Takoma Park, spent eight years in the Army, achieved the rank of staff sergeant and left the service in August. He has a wife, two children and no income. Lespier says he applied for benefits at the unemployment office in Wheaton Plaza and was told he was ineligible.

Lespier said he left the Army because he would have been transferred to Germany without his family. So his separation was "voluntary."

"I had no money saved when I left the service," Lespier said. Since leaving the Army he has been working without pay as pastor of the Canaan Christian Church in Takoma Park, which has a Spanish-speaking congregation. He is trained as a biomedical technician, he said, and is looking for a job in that field.

Meanwhile, the family is dependent on the kindness of friends and church members for food.

He says what annoyed him most about the change in regulations was its immediacy. "My decision to go into the Army was made before the new president took over," he said. "So I don't know why they didn't make it effective for people who joined the Army after a certain date. Once you're there, you're stuck."

Mitzi Buchanan, who lives in Wheaton, applied to leave the Navy in May because she was pregnant. She was told she must wait until Sept. 22 so that she could be replaced in her communications job. During that time the unemployment regulations were changed, and when she applied for benefits she was told she was ineligible.

Buchanan's baby is due next month. If she had remained in the Navy, she said, "It would have been a real big hardship. . . . I was working 12 hours a day and I would have had to go back to work in six weeks. It's kind of hard."

Buchanan said the lack of jobless pay makes her situation more difficult, though not impossible. She will have to go back to work sooner. "When it comes down to it, I'm willing to work," she said, "but who's going to hire me when I'm eight months pregnant? In the meantime, what am I supposed to do?"

STATEMENT OF JAMES G. BOURIE, DIRECTOR OF ECONOMICS, THE AMERICAN LEGION

Mr. Chairman and members of this subcommittee: The American Legion thanks you for allowing us the time to present its views on Unemployment Insurance for veterans. A pertinent resolution adopted by the American Legion is attached with the request that it be made part of the record.

Mr. Chairman, The American Legion firmly and unequivocally opposes the termination of Unemployment Compensation for Ex-service people (UCX) who are otherwise eligible for re-enlistment. Ever since this change, our Washington office has been inundated with calls and letters from recently separated individuals incredulous that the Administration and Congress eliminated UCX. This is hard to accept as once again we see the Administration touting military service as an honorable profession while dismantling programs for those who indeed serve honorably. It is almost to the point where we can second-guess the Administration as to where future budget/personnel cuts will have an effect—on veterans programs.

The Administration's logic to eliminate UCX is well known as a money saving device. Yet, the end result is a tangle of irony, confusion and misinformation. The Department of Labor advances the argument that ex-service people should not be treated any differently than civilian workers and that this rule would bring the two more in line. The weakness of that argument is that military and civilian workers have never been, and will never be, on the same level. The very nature of military service cannot be equated with the civilian work force. Moreover, the rules applicable to eligibility are confused, resulting in undesirable ex-servicemen being eligible for UCX while denying benefits to someone who served honorably.

Mr. Chairman, as stated before, ex-military people are vastly unlike the civilian work force in that those of the military are obligated by contract; often paid far less than their civilian counterpart; moved about the world on an involuntary basis, suffer family disruption and lengthy absences and are often separated at a geographic point hundreds of miles from their homes of record. Importantly, the government has a continuing obligation to that person once his military service is over. The government cannot provide benefits on the one hand and remove them with the other. This blatant elimination of benefits to veterans must have a profound negative effect on those contemplating military services.

Mr. Chairman, in conclusion, The American Legion strongly opposes this unfair treatment imposed on ex-service persons as regard UCX benefits and implores this subcommittee to join with it to rectify a most serious wrong done to those who serve their country.

[Attachment]

NATIONAL EXECUTIVE COMMITTEE OF THE AMERICAN LEGION, INDIANAPOLIS, IND.

Resolution No. 23—Committee: Economics; Subject: Oppose elimination of unemployment compensation for ex-servicemen (UCX) who complete their military service contract.

Whereas, The Omnibus Reconciliation Act of 1981 amended Section 8521 of title 5, United States Code, to preclude the payment of unemployment compensation benefits to military people who are eligible for re-enlistment; and

Whereas, Unemployment compensation provides the ex-service person with temporary subsistence while seeking civilian employment; and

Whereas, Ex-service people are in general unable to seek permanent civilian employment while in the military since their military station is likely not in the same geographic area where they intend to reside; and

Whereas, Individuals who are not eligible for re-enlistment are rewarded with unemployment compensation benefits and the change, therefore, discriminates against those who are; now therefore be it

Resolved, by The National Executive Committee of The American Legion in regular meeting assembled in Indianapolis, Indiana, on October 14-15, 1981, that The American Legion oppose the elimination of unemployment compensation for ex-servicemen; and be it further

Resolved, That The American Legion seek the appropriate remedies to amend Section 8521 of title 5, United States Code, to allow ex-service people to collect unemployment compensation.

STATEMENT OF THE INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO, BY WILBUR DANIELS, EXECUTIVE VICE PRESIDENT

On behalf on the International Ladies' Garment Workers' Union, we welcome this opportunity to submit this statement to you on the legislation you are considering.

The purpose of this statement is to express our opposition to the reduction of unemployment compensation because of private or governmental retirement benefits received by an individual.

The union I represent is particularly concerned about this matter since more than 80 percent of our members are women, many of whom belong to ethnic and racial minorities. Many of our workers are widows or single women living alone. A relative large percentage are older women, many of whom continue to work past retirement age. Since wages in the garment industry are relatively low, the Social Security benefits our members become entitled to are so meager that many must continue to work after they have applied for Social Security in order to make out. Work in the garment industry is highly seasonal as well as severely affected by imports from low-wage countries, which results in periodic spells of temporary unemployment.

Those older workers who have not retired from the labor market and have earned substantial recent past wages are entitled to and receive unemployment insurance during periods of unemployment. At the same time, since their annual earnings from work are so low, some are also entitled to collect part or all of their Social Security benefits. The income of these older members from a combination of work, unemployment insurance and Social Security benefits has often been only enough to eke out a barely decent living. To these people, the current federal requirement that state unemployment insurance benefits be reduced by 50 percent of Social Security benefits has cruel and sometimes catastrophic consequences. We oppose this requirement for several reasons.

Unemployment insurance is a state program. Social Security is a federal program. Both are financed in different ways and each program is designed to insure workers against different contingencies. Once workers establish their right to collect unemployment insurance through sufficient and recent past work whenever they lose their jobs through no fault of their own, this right is not affected by savings they may have in the bank or income they may receive through stocks, bonds or inheritance. Yet Social Security income is now used to limit unemployment insurance benefits. We feel this is a violation of the insurance principle behind the unemployment insurance program and constitutes an improper and unsound application of a needs test such as underlies the welfare program.

Here are people who want to work and do work. Here are people of retirement age who nevertheless are delaying their full and complete retirement. But instead of making it easier for them to do so, we make it more difficult and costly by punishing them with reduction of unemployment benefits because of receipt of Social Security. And this at a time when the Administration is seeking to encourage later retirement by ill-conceived methods of drastic reduction of Social Security benefits. We submit that one way to encourage older workers to stay in the labor market is by eliminating the federal requirement to reduce unemployment benefits by half of Social Security income.

There should not be a federal requirement in this respect at all. Unemployment insurance is a state program. Efforts to erect minimum federal standards to improve state unemployment insurance benefits have always been rejected in the past on the ground that this would constitute unwarranted federal interference in state programs. Apparently federal interference is legitimate only when it comes to the worsening of benefit standards.

For these reasons we advocate the full repeal of the present federal requirement that unemployment compensation be reduced because of receipt of both private and public pensions. At the minimum, we advocate the elimination of that provision of the law which mandates the reduction of unemployment insurance by 50 percent of Social Security income. Thank you for this opportunity.

STATEMENT OF DICK WARDEN, LEGISLATIVE DIRECTOR, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW

This Statement is submitted on behalf of the UAW to urge support of the numerous bills[1] which would repeal provisions of the Federal Unemployment Tax Act that require States to offset an individual's unemployment compensation by pensions.

The pension offset provision, paragraph (15) of subsection (a) of Section 3304 of the Internal Revenue Code of 1954, was first enacted in 1976, but its effective date was delayed until March 31, 1980 in part to give the National Commission on Unemployment Compensation the opportunity for a thorough study of the issue. The National Commission consistently and unanimously recommended repeal of the pension offset provision.[2]

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[1] H.R. 531, H.R. 1195, H.R. 1429, H.R. 1885, H.R. 1902, H.R. 1970, H.R. 2808, H.R. 3486, and S. 577 among others.

The original pension offset provision required state agencies to reduce a person's unemployment compensation by 100% of the amount of any pension or social security received.

The reluctance of States to adopt the federally mandated pension offset provision is reflected in the fact that nearly 50% of the States had not enacted conforming legislation by March 31, 1980, despite the Congressionally mandated March 31, 1980 deadline.

Numerous bills to repeal or ameliorate the very harsh impact of the original bill were considered, and some—though not all—of the harshest features of the pension offset provision were modified effective September 26, 1980 in Section 414 of the Multi-Employer Pension Plan Amendments of 1980, Public Law 96-364. Despite some improvement, the pension offset provision is still discriminatory, unjust and punitive to pension recipients, especially those receiving social security. To compound the inequities of the law itself, the U.S. Department of Labor is interpreting the pension offset in ways Congress clearly never intended.

We will not focus today on the extent to which any pension offset provision is totally inconsistent with the purposes of unemployment compensation; or how the assumptions underlying the pension offset provision are totally erroneous; or how the provision is contrary to the Social Security Act which in recent years has been amended to encourage social security recipients to work by increasing the amount of wages a social security recipients can earn; or how the impact of the pension offset provision falls heavily on the older worker and is totally inconsistent with the Age Discrimination in Employment Act which protects workers until they are 70 years old. These points which have been made before by the UAW[3] and others, continue to be valid.

Instead, we will point out the inequities of the current law and the manner in which the Department of Labor is increasing the inequities by its interpretation of the law.[4]

The current pension offset provision, as amended on September 28, 1980, limits the offset to a pension attributable to a base period employer, and—except for social security and railroad retirement—only if the base period employment increases or affects eligibility for a pension. On its face, this provision discriminates against Social Security recipients for no apparent reason. This discrimination, we believe, is subject to constitutional challenge.

However, in two major respects, DOL is interpreting this portion of the statute in an even more restrictive manner than required by the law itself.

(1) DOL has notified the States to reduce social security recipients' unemployment compensation by the amount of social security even if the individual's social security is based entirely on service with a pre-base period employer. This is totally contrary to the intent of the statute as indicated by the provision's co-sponsor, Senator Bradley.[5]

(2) DOL has notified the States that when base period employment does increase the amount of a person's pension, the whole pension must be subtracted from the individual's unemployment compensation, not just the amount of the increase. This result is highly inequitable and nowhere mandated by the statute. As an example.

Two workers, A and B, each work for the same employer. Worker A had accrued a pension worth $100 per week prior to the base period. Worker B had accrued a pension of $99 per week prior to the base period. Each is laid off the same day. The amount of Worker A's pension did not increase during the base period, since he was already at the maximum. However, the amount of Worker B's pension increased by

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[2] See National Commission on Unemployment Compensation first interim report, p. 100, November 1978; Unemployment Compensation Policy Decisions: preliminary, p. 11, June 30, 1980.

[3] The statement of the UAW before this subcommittee on Sept. 21, 1979, is attached for the convenience of the subcommittee (Att. A) [retained in subcommittee file].

[4] Within less than 2 weeks after the 1980 amendments were effective, DOL rushed out its interpretation of the law and its instructions to States in the form of an unemployment insurance program letter (UIPL). As with previous UIPL's, the UIPL was issued without notice, publication or opportunity for comment. At least two Federal district courts have struck down the DOL instructions as improperly promulgated, and have enjoined the Secretary of Labor from enforcing the UIPLs. Nonetheless, since DOL has not yet published any new instructions, and has not notified the States that the UIPL has been invalidated, most States believe they must conform to DOL's interpretation or face decertification.

[5] Compare DOL's UIPL No. 7-81, p. 4, para. 1 (Att. B) and Senator Bradley's statement in the Congressional Record, 126 Congressional Record Statement 12901, col. 1 (daily ed. Sept. 18, 1980) (Att. C) in which DOL's instruction is totally contrary to Senator Bradley's example.

$1.00 due to work performed during the base period, raising his pension to $100. Because of their earnings during the base period, both workers are eligible for $110 in unemployment insurance. Under the Secretary's construction of the statute, Worker A collects both his pension and $100 in unemployment insurance, a total of $210 per week. Because Worker B's pension increased by $1.00 during the base period, his entire pension of $100 is offset, and he receives only $10 of unemployment insurance, a total of $110 per week.

The Department of Labor's positions surely are not mandated by the language of the law nor in fact can they be rationalized as providing for "ease of administration". For example, since the local unemployment insurance agency must determine whether and to what extent a pension increased because of service during the base period in order to determine whether there will be any offset at all, it is just as administratively convenient to offset only the increase as it is to offset the whole pension.

William B. Lewis, Administrator or the Unemployment Insurance Service of DOL's Employment and Training Administration, recently testified before this Subcommittee that the current law "only applies to a pension to which the employer has contributed, and only to the extent of his participation in its cost. A pension for prior service, not related to base period employment is not required to be included." In fact, this statement is grossly misleadling as we've indicated above.

Section 3304(a)(15)(B) of the pension offset provision, as amended in September 1980, permits States to limit the amount of the pension reduction by taking into account the contributions made by workers into their own retirement accounts. But since this is not a requirement, States are free to reduce unemployment compensation by every dollar of retirement benefit received even when a portion of the worker's own wages financed all or part of the pension.

To compound this inequity, the guidance given by the Department of Labor to States which do wish to reduce the offset to take workers' pension contributions into account unnecessarily and we believe illegally circumscribes the discretion of the States in how to calculate the reduction.

For example, DOL prohibits States from reducing the pension offet by more than the employee share of the contributions into the pension plan, but permits States to reduce the pension offset by less than the employee share of contributions in the plan.

Thus, in situations where an employee has made 60 percent of the contributions into a pension plan, DOL prohibits the States from taking any more than 60 percent into account, but expressly authorizes the States to take less than 60 percent into account.

What sense, we wonder, is there in DOL's tortured construction and where does it come from? The UAW believes there should not be any pension offset at all. However, any pension offset which remains on the books must require that at least the full amount of an individual's own share of contributions be taken into account.

In the meantime, DOL should not be so narrowly circumscribing the States in their attempt to exercise the option in § 3304(a)(15)(B).

DOL's interpretation of the statute is unnecessarily restrictive in a number of other ways. For example, DOL permits the pension offset provision to be applied to pensions received on a lump sum basis, even though the statute specifically refers only to "periodic" pensions.

Furthermore, even though a pension may be received on a monthly basis; DOL strongly suggests to States that the States must prorate the pension on a weekly basis. As a result, the pension offset has an even harsher impact than if unemployment compensation were reduced only during the week the pension is actually received.

DOL also instructs States to apply the pension offset to pensions which vested before the effective date of the federal law—an instruction which is not mandated by the statute and which has the effective of interfering with collectively bargained pensions.

Pensions are a common benefit negotiated by labor and management. They do not come free. Typically, the UAW has only been able to negotiate an improved pension by agreeing to a lower wage increase than it otherwise might have obtained. The pensions were negotiated in reasonable reliance upon an unemployment insurance system that did not require pensions to be offset against unemployment benefits.

The UAW pension system was carefully crafted to be related to social security benefits. Under the existing federal pension offset provision, social security is nearly always subtracted from unemployment compensation, and the UAW pension is subtracted in some instances. This impairs the practical value of the negotiated pension package and thus directly undermines the hard-won benefits obtained at the bargaining table.

That impairment can be eliminated if the pension offset provisions are repealed all together. The impairment can be minimized by eliminating the offset for social security benefits, and by making it clear that the FUTA offset provision applies only to pensions which vested before its effective date.

The existing pension offset provision is a complicated law. The Labor Department's explanation of the law makes it sound deceptively simple and rational. In fact, as we have tried to point out, the Act on its face discriminates against Social Security recipients and, especially as interpreted by DOL, has significantly different effects on individuals who are nearly identically situated. As a result, the basic inequities of the law are magnified many times.

We urge this Subcommittee to recommend repeal of the pension offset provision. Amendment of the law to make it clear that the offset provision does not apply to social security would be better than no amendment at all, but would not address many of the inequities in the law.

Anything less than total repeal should also insure that the Department of Labor not continue to take its unnecessarily restrictive interpretations.

Thank you for the opportunity to present this statement.

Attachment B

Directive: Unemployment Insurance Program Letter No. 7-81
To: All State Employment Security Agencies
From: Office of the Deputy Assistant Secretary, Roberts T. Jones, Administrator, Office of Management Assistance
Subject: Amendments Made to the Federal Unemployment Tax Act by Public Law 96-364

1. *Purpose.*—To inform State agencies of the amendments made by Public Law 96-364 to the Federal Unemployment Tax Act, the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA) and Title 5 U.S.C. 8521.

2. *References.*—Sections 414, 415 and 416 of P.L. 96-364; Section 3304(a)(15), FUTA; Section 202, EUCA; 5 U.S.C. 8521(a)(1), and UIPL 24-80.

3. *Background.*—These amendments modify the pension deduction provision in section 3304(a)(15), FUTA, specify circumstances in which extended benefits are not payable on interstate claims, and increase the period of service necessary for former members of the Armed Forces to establish entitlement to unemployment compensation under Title 5 of the U.S.C.

4. *Amendment to Section 3304(a)(15), FUTA, the Pension Deduction Provision.*—Section 414 of P.L. 96-364 amended section 3304(a)(15), FUTA, to require deduction of pension payments only in specified cricumstances, and to allow States to consider an individual's contributions to the pension payment in determining the amount to be deducted. As so revised, the pension deduction standard now provides as follows:

> "the amount of compensation payable to an individual for any week which begins after March 31, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity or other payment, which is reasonably attributable to such week [;] except that—
>
> *"(A) the requirements of this paragraph shall apply to any pension, retirement or retired pay, annuity or other similar periodic payment only if—*
>
> *"(i) such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained (or contributed to) by a base period employer or chargeable employer (as determined under applicable law), and*
>
> *"(ii) in the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), services performed for such employer by the individual after the beginning of the base period (or remuneration for such services) affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment, and*
>
> *"(B) the State law may provide for limitations on the amount of any such reduction to take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment;".*
>
> (New language in italic, deleted language bracketed.)

The amendments made by Public Law 96-364 to section 3304(a)(15) became effective on September 26, 1980.

Section 414(b) of Public Law 96-364 provides that the new pension deduction standard is applicable for certification of the States for 1981 and subsequent years.

Therefore, States have the option to implement the new Federal deduction standard as of September 26, 1980. However, full conformity and compliance with the requirements of section 3304(a)(15), FUTA, as amended, is required for certification of State laws for the 12-month period beginning on November 1, 1980, and ending October 31, 1981. The requirements of section 3304(a)(15) prior to amendment by Public Law 96-364 remain effective through September 25, 1980. However, we do not recommend that these amendments be made retroactive except as is necessary where the State will have no pension deduction provision as of November 1, 1980, in which case the law should be made effective retroactively as of that date.

State laws which now provide for the deduction of pension payments in the circumstances prescribed by the Federal law prior to these amendments are not required to take further action in order to satisfy the requirements in the new amendments. However, we strongly recommend that States proceed now to take advantage of the less stringent condition under which pensions must be deducted from unemployment benefits pursuant to the Federal law requirement.

Section 3304(a)(15), FUTA as amended by Public Law 96-364, reflects only the minimum conditions under which deduction must be required by State law for certification under FUTA. Although a State may broaden the scope of its deduction of pension payments beyond the conditions in which deduction is required under the Federal law, it may not adopt less stringent conditions which fall short of the Federal requirement.

The requirement of the pension deduction standard in section 3304(a)(15), FUTA, as modified by the above cited amendments, is now applicable in less restrictive circumstances as noted above. The deduction is not only limited by the conditions contained in clauses (i) and (ii), but also gives States the option of limiting the deduction in unemployment benefits by taking into account an employee's contribution to the pension fund. As will be explained below, the limitations specified by these new clauses mean that the reduction in unemployment compensation by the amounts of pension payments received by an individual will be required under Federal law only if the pension is under a plan maintained or contributed to by a base period or chargeable employer and then, only if the services performed for such employer affect eligibility for, or increase the amount of, the retirement payment. However, as a result of the exception in clause (ii), eliminating application of its provisions to payments made under the Social Security Act or the Railroad Retirement Act of 1974, those particular payments are deductible in any case in which the individual's base period employer contributed to or maintained the pension plan under such Acts.

The limitation specifying that the deduction of a pension payment is required only if the pension is derived under a plan that a base period employer or chargeable employer contributed to or maintained is set forth in clause (i). Whether or not the employer is a chargeable or a base period employer is to be determined under the provisions of the State law. The employer need not be both a base period employer and also chargeable with any benefits payable under the State law. If it is either a base period or a chargeable employer that contributed to or maintained the plan, the pension received from the plan must be deducted.

Clause (ii) also requires in addition that the "services performed for such employer by the individual after the beginning of the base period (or remuneration for such services)" must affect "eligibility for, or increase the amount of, such pension . . . ." This means that if the services performed for the base period or chargeable employer did not affect either eligibility for or the amount of the pension received from the plan maintained or contributed to by a base period or chargeable employer, then the deduction is not required. The phrase "eligible for" pertains to the individual's capability of satisfying the conditions necessary to qualify for the pension. Thus, if the individual qualifies for a pension on the basis of the services performed for the base period or chargeable employer, or if the amount of the pension payment is increased by reason of such services, the pension payment would then be deductible.

The provisions of clause (ii) allowing States to disregard pension payments if the base period employment did not affect eligibility for or increase the amount of the pension, is not applicable, however, to Social Security and Railroad Retirement pensions received by an individual. Clause (ii) states specifically that the conditions contained therein are applicable only "in the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law) . . . ." Consequently, only the provisions in clause (i) apply to Social Security and Railroad Retirement payments, which means that those payments are deductible whenever the individual's base period employer or the chargeable employer contributed to the plans provided under those Acts. It is not necessary that any contribution made on behalf of an individual under those plans or any services performed for such employers affect eligibility for or increase the amount of the individual's pension.

Finally, under new section 3304(a)(15)(B), a State "may provide for limitations on the amount of any such reduction to take into account contributions made by the individual for the pension * * *." Under this option a State may provide under its law for eliminating any part of the pension payment equivalent to the employee's share of the contributions to the pension fund, or it can provide for elimination of a representative percentage of the pension as determined under the State law. These are only examples of the types of limitations that can be applied under this option and are not intended to cover all of the possible alternatives that may be developed by the States. Although broad latitude is provided to the State in exercising this option, we believe any limitation adopted should be consistent with the basic purpose of the option which is to allow elimination of the individual's share of the contributions to the pension fund in determining the amount of pension to be deducted.

Determinations and review decisions on pension deduction issues should include specific findings on each of the elements involved. The kinds of findings will depend upon the provision adopted by the State. For example, when a Social Security pension is involved, there should be a finding on whether the individual is a primary beneficiary, because only primary insurance benefits are required by the Federal requirement to be deducted. If the provision is limited to pensions maintained or contributed to by a base period employer, the findings should specifically indicate whether a base period employer is involved. When an individual is receiving more than one pension, it should be specifically found whether both meet the deduction requirements. It is also required that determinations and appeal decisions particularly include the method by which a monthly pension is pro-rated to a weekly amount.

A number of States that amended their laws to meet the requirements of section 3304(a)(15) prior to its amendment by Public Law 96-364, also included provisos to render those provisions inoperative if they were not required to be included in the State law as a condition for full tax credit against the tax imposed by the FUTA. Those provisos were included in anticipation of the possible deletion of the Federal pension deduction standard. Since no deletion occurred, a question has arisen as to the impact of the Federal law changes on these provisos. Whether or not those changes will require the States to invoke those provisos is, of course, a matter to be decided by State officials. However, since the prior provisions of section 3304(a)(15) are more restrictive than the revised provisions, a State law which contains the elements of the prior provision would nevertheless continue to be consistent with section 3304(a)(15) as amended. Therefore, it is strongly recommended that States take action or refrain from taking action under such provisos only if it is assured that the State law will meet the requirements of section 3304(a)(15), as amended by Public Law 96-364. The States are urged not to take action which would have the effect of leaving the State without any pension deduction provision because that would immediately place the State in the position of having its law inconsistent with the requirements in section 3304(a)(15). In this case, the State should refrain from taking any action until the State legislature has had the opportunity to amend the law to assure consistency with the Federal requirement and thereby avoid any period in which the State law does not meet those requirements.

5. *Amendment to Section 202 of the Federal-State Extended Unemployment Compensation Act of 1970.*—Section 416 of Public Law 96-364 amended section 202 of the Federal-State Extended Unemployment Compensation Act of 1970 by adding a new subsection (c) which prohibits payment of extended benefits pursuant to an interstate claim if the claim was filed in an agent-State where an extended benefit period was not in effect. However, the first 2 weeks of extended benefits otherwise payable under such a claim must still be paid to an individual since the prohibition applies only to weeks beyond that period.

New subsection (c) of section 202 reads as follows:

"(c)(1) Except as provided in paragraph (2), payment of extended compensation shall not be made to any individual for any week if—

> "(A) extended compensation would (but for this subsection) have been payable for such week pursuant to an interstate claim filed in any State under the interstate benefit payment plan, and
>
> "(B) an extended benefit period is not in effect for such week in such State.

"(2) Paragraph (1) shall not apply with respect to the first 2 weeks for which extended compensation is payable (determined without regard to this subsection) pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended compensation account established for the benefit year.

"(3) Section 3304(a)(9)(A) of the Internal Revenue Code of 1954 shall not apply to any denial of compensation required under this subsection."

This is a new Federal requirement that State laws must include in order to satisfy the provisions of section 3304(a)(11), FUTA, requiring payment of extended compensation as provided by the Federal-State Extended Unemployment Compensation Act of 1970. To meet this requirement, a State law must, as specified by Section 416(b), include provisions implementing new subsection (c) of section 202 for any week which begins on and after June 1, 1981, unless the State legislature does not meet in a regular session which begins during 1981 and before April 1, 1981. In that event, the State must implement the requirement for weeks of unemployment beginning on or after June 1, 1982. However, since the amendment is otherwise effective for weeks of unemployment beginning after October 1, 1980, a State has the option to implement the requirement with the week beginning October 5, 1980.

Under the provisions of new subsection (c), when an individual files an interstate claim for extended compensation under the interstate benefit payment plan such compensation shall be paid for the first two compensable weeks but may not be paid for any additional week unless an extended benefit period is in effect in the agent State for such weeks. If a claimant thereafter moves to another agent State and files an interstate claim under the interstate benefit program, he or she may receive extended compensation only if an extended benefit period is in effect for the week compensation is claimed. If such a period is not in effect, the liable State would be prohibited from paying extended compensation under that claim since the individual will have previously received "the first 2 weeks for which extended compensation is payable" pursuant to an interstate claim filed in a State with an "off" trigger. Since the restriction in new subsection (c) is only applicable to interstate claims filed under the interstate benefit payment plan, it does not apply so as to deny extended compensation to an individual who files a claim classified as either a visiting, transient, or courtesy claim.

When Canada is the agent State, the denial of extended benefits applies to the same extent as for any other claim filed from an agent State that is not in an Extended Benefit Period. Canada is not a party to the Federal-State Extended Unemployment Compensation Act.

The provision in new section 202(c)(3) rendering the requirements in section 3304(a)(9)(A), FUTA, inapplicable to any denial required by these amendments, was included to avoid the conflict that would otherwise have occurred in the Federal law upon enactment of new subsection (c). Paragraph (3) has no other effect.

Procedural instructions for implementing this new requirement and amendments to the current Extended Benefit regulations to reflect these changes will be issued at a later date.

6. *Amendment Relating to Length of Service Needed to Qualify for UCX Benefits.*—Section 415 of P.L. 96-364 also amended Title 5 of the United States Code to increase the length of service in the Armed Forces that is required for former members to establish eligibility for unemployment compensation. Under the provisions of subparagraph (A) of section 8521(a)(1) of Title 5, U.S.C., as amended, a service member must now have 365 days or more of active service in order to be eligible for unemployment compensation instead of the 90-day period formerly required by that section. The amendment applies with respect to any new (first) claims filed for unemployment compensation on or after October 1, 1980. Instructions for implementing this change are being provided in a separate document.

The attachment contains draft language which can be used by States to implement the new pension deduction standard and the amendment providing for the cessation of extended benefits in the prescribed circumstances discussed earlier.

7. *UIPL No. 24-80.*—This letter supplements UIPL No. 24-80 dealing with the Federal pension deduction standard prior to amendment by Public Law 96-364, except that in those respects in which the two letters are inconsistent, this letter supersedes UIPL No. 24-80.

8. *Action Required.*—SESAs are requested to.

a. Take necessary action to assure by change in the State law that pension payments received by claimants are deductible under the State law as required by section 3304(a)(15), FUTA, as amended, and that extended compensation is denied in the circumstances required by new subsection (c) of section 202 of the Federal-State Extended Unemployment Compensation Act of 1970 as amended; and,

b. Inform the regional offices of the necessity for action or no action invoking provisos included in existing pension deduction provisions which, when invoked, invalidate such provisions, and indicate what other action will be taken to assure that the State law continues to be applied consistent with the requirements of section 3304(a)(15), FUTA, if those provisos are invoked.

9. *Inquiries.*—Inquiries should be directed to your regional office.

ATTACHMENT, UIPL No. 7-81

Draft Language to Implement Section 3304(a)(15), FUTA, as Amended by Public Law 96-364—Federal Pension Deduction Standard.—The following draft provision provides for reduction of pensions as required by the amendments to section 3304(a)(15), and includes two options for adjusting the pension to take into account contributions made by the individual. "For any week with respect to which an individual is receiving a pension (which shall include a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment) under a plan maintained or contributed to by a base period or chargeable employer (as determined under applicable law), the weekly benefit amount payable to such individual for such week shall be reduced (but not below zero),

(a) by the pro-rated weekly amount of the pension after deduction of that portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual; or

(Alternative to subsection (a))

(a) By one-half the pro-rated weekly amount of the pension if at least half but less than 100 percent of the contributions to the plan were provided by such individual; or

(b) By the entire pro-rated weekly amount of the pension if subsection (a) or subsection (c) does not apply; or

(c) By no part of the pension if the entire contributions to the plan were provided by such individual, or by the individual and an employer (or any other person or organization) who is not a base period or chargeable employer (as determined under applicable law).

(d) No reduction shall be made under this section by reason of the receipt of a pension if the services performed by the individual during the base period (or remuneration received for such services) for such employer did not affect the individual's eligibility for, or increase the amount of, such pension, retirement or retired pay, annunity, or similar payment. The conditions specified by this subsection shall not apply to pensions paid under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law). Payments made under such Acts shall be treated solely in the manner specified by subsections (a), (b) and (c) of this section."

The provisions of the alternative to subsection (a) are designed to facilitate administration of this option by providing a practical means of adjusting the deduction to take into account the individual's contribution to the pension fund without extensive calculations.

Draft Language to Implement new section 202(c) of the Federal-State Extended Unemployment Compensation Act of 1970 as amended by Public Law 96-364—Cessation of extended benefits paid under an interstate claim in a State when no extended benefit period is in effect.

Following the enactment of Public Law 91-373, which established the permanent Federal-State extended benefits program, we issued the Draft Legislation to Implement the Employment Security Amendments of 1970—H.R. 14705. Each State received a copy of that document for use in implementing Public Law 91-373. A section was included on pages 119-128 setting forth recommended language to implement the extended benefit program. The following draft language is intended to be incorporated into the framework of that section and should be inserted as new subsection (g).

"*(g)(1) Cessation of extended benefits when paid under an interstate clain in a State where extended benefit period is not in effect.* Except as provided in paragraph (2), an individual shall not be eligible for extended benefits for any week if:

> "(A) extended benefits are payable for such week pursuant to an interstate claim filed in any State under the interstate benefit payment plan, and
>
> "(B) no extended benefit period is in effect for such week in such State.

"(2) Paragraph (1) shall not apply with respect to the first 2 weeks for which extended benefits are payable (determined without regard to this subsection) pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the individual with respect to the benefit year."

Directive: Unemployment Insurance Program Letter No. 7-81, Change 1.
To: All State Employment Security Agencies.
From: T. James Walker, Administrator, Administration and Management.
Subject: Interpretation of Provisions in Section 3304(a)(15)(B), FUTA, Permitting State laws to Take into Account Employee Contributions to Pension Plans Under Pension Reduction Requirement.

1. *Purpose.*—To inform SESAs of the interpretation of subparagraph (B) of section 3304(a)(15) of the Federal Unemployment Tax Act giving States the option of limiting by law the amount to be deducted from an individual's weekly benefit entitlement by reason of receipt of a pension payment based on the previous work of the individual, by taking into account the individual's contributions for the pension.

2. *References.*—Section 414, Public Law 96-364 (H.R. 3904); UIPL 24-80 and UIPL 7-81.

3. *Background.*—UIPL 7-81, issued November 7, 1980, contained an explanation of the amendments to section 3304(a)(15) made by section 414 of Public Law 96-364. With reference to subparagraph (B), relating to the option to take into account employee contributions to pension plans, it was stated on page 5 of UIPL 7-81 that a State may eliminate from the pension amount to be deducted from a benefit amount payment "any part of the pension payment equivalent to the employee's share of the contributions to the pension fund" or "a representative percentage of the pension," as examples of acceptable types of limitations on pension reduction. In UIPL 7-81 it was further stated that subparagraph (B) gave States "broad latitude" in exercising the option; however, it also contained an expression of the view that any limitation adopted by a State "should be consistent with the basic purpose of the option which is to allow elimination of the individual's share of the contributions to the pension fund in determining the amount of pension to be deducted." In UIPL 24-80, a similar view had been expressed earlier with respect to two bills in Congress late in 1979 and early in 1980 to amend the pension reduction requirement in language identical to subparagraph (B). The view was expressed on page 5 of UIPL 24-80 that State laws "can provide for deduction of a representative percentage of the pension *as determined under the State law.*" (Emphasis added). A more recent decision on the meaning of subparagraph (B) necessitates changes on page 5 of UIPL 7-81, and supersedes the sentence on page 5 of UIPL 24-80 from which the above quote is taken.

Subparagraph (B) is an optional exception to the general rule which requires the deduction of pensions from unemployment benefits dollar for dollar, and is, therefore, to be narrowly construed to effectuate its purpose. Its purpose, as reflected in its legislative history, is to reduce the pension offset amount by an amount "consistent with" or "related to" contributions toward the pension made by the worker. The "flexibility" given to the States, mentioned in the legislative history, refers to the amendments to section 3304(a)(15) which limited the deduction requirement (1) to pension payments made under a plan maintained or contributed to by a base period or chargeable employer, in contrast to pension payments based upon the previous work of the individual in his work history; and (2) to pension payments where eligibility for the pension or the amount of the pension is affected by work performed after the beginning of the base period (except social security and railroad retirement pensions); and which further gave to the States the option to take into account by their laws contributions made by individuals for their pensions.

Reduction of the pension offset amount is "consistent with" the worker's contributions when, as explained by Congressman Brodhead, one of the conferees on the bill, a State limits "the offset to one-half the amount of the social security pension received by an individual who qualifies for unemployment benefits." Congressional Record, page H9180, September 19, 1980. A similar statement was made and example given by Congressman Corman, Chairman of the Subcommittee on Public Assistance and Unemployment Compensation of the House Ways and Means Committee, which has jurisdiction of the bill, with respect to a provision identical to subparagraph (B) in H.R. 5507, Congressional Record page H623, February 6, 1980. A similar example was given by Senator Bradley, one of two co-sponsors of the amendment in H.R. 3904. Congressional Record, page S12901, September 18, 1980. States would be permitted by the option to reduce the offset amount by "that part of a pension which reflects a return of employee contributions." Senate Report No. 96-472, page 3, December 10, 1979. States would be permitted to apply the reduction "in a manner which provides a reasonable adjustment" to take into account an employee's contributions to the pension plan. Ibid, page 12.

4. *Interpretation of Subparagraph (B).*—It is clear from this legislative history that it was the intent of Congress to allow States to take into account employee contributions for a pension in an amount up to the proportion by which the employee contributed to the pension plan from which the payments are received. Subparagraph (B) is construed, in accordance with its language and related legislative history, as permitting a State to provide in its law for limiting the pension deduction otherwise required under subparagraph (A) of section 3304(a)(15) by reducing

the offset amount by an amount that is the ratio of the employee's contributions to total contributions to the plan or system by both the employee and his or her employer(s). From the statutory language and the examples given in the legislative history, it is clear that the amount of the pension that may be disregarded may be no greater than such ratio of the employee's contributions.

In the case of pension plans or systems where the employee makes all of the contributions to the principal forming the basis of the pension, none of the pension would be deductible. This is so because if a base period or chargeable employer had not made any financial contribution to the principal of the pension for the employee, the amount received as a pension would not fall within the scope of subparagraph (A)(i) of section 3304(a)(15), and the provisions of subparagraph (B) would not be reached.

5. *Determination of Proportion of Employee Contributions.*—It will be necessary in any State law provision that is consistent with subparagraph (B) to provide for reasonably based determinations of the proportion of employee contributions to a pension plan or system, so that the amount of any pension to be disregarded for benefit reduction purposes will not exceed the ratio of the employee's contributions to the total contributions to the principal of the plan or system by the employee and his or her employer(s). Because of the different types of pension plans and systems that exist, and the specific data that may be readily available to SESAs for making determinations of the ratios of employee contributions, it is recommended that the State laws confer broad authority for making reasonably based determinations.

Depending upon the type of plan or system and specific data available, the following rules apply:

a. *General rule, where proportion of employee contributions to total contributions is known.*

(1) Add values of total employee and employer contributions to find amount of total contributions.

(2) Divide amount of total employee contributions by total of all contributions to find proportion of contributions paid by employee.

(3) Multiply the ratio representing employee contributions by the amount of the employee's weekly pension to find amount of pension attributable to employee contributions.

Example: X, over his working life, contributed $2,500 to his employer's (ABC's) defined contribution pension plan. ABC also contributed $7,500 to the plan on X's behalf. When X retires, he will receive $100 a week as a pension benefit. The portion of this pension attributable to X's contributions is calculated as follows:

Total amounts contributed on X's behalf: $10,000 ($2,500 + $7,500).

Ratio of contributions attributable to X: 25 percent ($2,500/$10,000).

Weekly pension amount attributable to X's contributions: $25 (25 percent x $100).

b. *Rule where proportions of both employee and employer contributions are known.*

Where the ratio of employee and employer contributions have been fixed at specified proportions in the plan or system over a substantial period of time preceding the employee's retirement, such ratio can be adopted without further determination for the purposes of a subparagraph (B) type of provision. For example, under the system for primary social security and Federal civil service retirement, the employee contributions are set at 50 percent, and it is not necessary to inquire any further.

c. *Rule where amount of employer contributions is not known.*

In situations where it is not possible to determine exactly the aggregate amount of employer contributions paid to a pension plan on an individual's behalf (as often is the case where the employee participates in a defined benefit plan), any method of computation that reasonably reflects or reduction to take into account contributions made by the individual for the pension . . ." Subparagraph (B) is construed, in accordance with its language and related legislative history, as permitting a State to provide in its law for limiting the pension deduction otherwise required under subparagraph (A) by reducing the offset amount by an amount that takes "into account contributions made by the individual for the pension." From the examples given in the legislative history, it is clear that the offset amount reflecting the individual's contributions is intended to be in a maximum amount which is no greater than the proportion that is the ratio of the individual's contributions made to the pension plan, from which pension payments are received, to total contributions made to the pension plan by the individual and the employer(s) of the individual in the pension plan or system.

Determinations and review decisions on pension deduction issues should include specific findings on each of the elements involved. The kinds of findings will depend upon the provision adopted by the State. For example, when a social security pension is involved, there should be a finding on whether the individual is a primary beneficiary, because only primary insurance benefits are required by the Federal requirement to be deducted. If the provision is limited to pensions maintained or contributed to by a base period employer, the findings should specifically indicate whether a base period employer is involved. When an individual is receiving more than one pension, it should be specifically found whether only one or all meet the deduction requirements. It is also required that determinations and appeal decisions particularly include the method by which a monthly pension is prorated to a weekly amount, and the basis for the determination of the employee's contribution and the amount taken into account in arriving at the amount deducted.

A number of States that amended their laws to meet the requirements of section 3304(a)(15) prior to its amendment by P.L. 96-364, also included provisos to render those provisions inoperative if they were not required to be included in the State law as a condition for full tax credit against the tax imposed by the FUTA. Those provisos were included in anticipation of the possible deletion of the Federal pension deduction standard. Since no deletion occurred, a question has arisen as to the impact of the Federal law changes on these provisos. Whether or not those changes will require the States to invoke those provisos is, of course, a matter to be decided by State officials. However, since the prior provisions of section 3304(a)(15) are more restrictive than the revised provisions, a State law which contains the elements of the prior provision would nevertheless continue to be consistent with section 3304(a)(15) as amended. Therefore, it is strongly recommended that States take action or refrain from taking action under such provisos only if it is assured that approximates the proportion of contributions made by the employee will be acceptable.

6. *Scope of Letter.*—The interpretations contained in this letter apply solely to section 3304(a)(15), FUTA, and have no application to any other Federal statute.

7. *Revised Page 5.*—This letter transmits a change to page 5 of UIPL 7-81.

8. *Action Required.*—SESAs are requested to substitute the attached page 5 for the one contained in UIPL 7-81, November 7, 1980, and retain this Change 1 to UIPL 7-81. The substituted text is in the first paragraph. There are, in addition, revisions in the second paragraph for consistency with the changes in the first paragraph.

The interpretations contained in this letter are effective for the certification period beginning November 1, 1980. SESAs should apply these interpretations as soon as possible after receipt of this letter.

9. *Inquiries.*—Questions should be directed to the appropriate Regional Office.

Attachment.

Attachment C

ERISA—CONFERENCE REPORT

Mr. **WILLIAMS**. Mr. President, I submit a report of the committee of conference on H.R. 3904 and ask for its immediate consideration.

The **PRESIDING OFFICER**. The report will be slated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 3904) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multi-employer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multi-employer plans, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The **PRESIDING OFFICER**. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the House proceedings.)

Mr. **WILLIAMS**. Mr. President, the conferees on H.R. 3904, the Multiemployer Pension Plan Amendments Act of 1980, have resolved the differences between the House and Senate on the two matters previously in disagreement. The Senate had provided an exemption from the preemption provision of the Employee Retirement Income Security Act of 1974 for the Hawaii Prepaid Health Care Act. The House had not provided such an exemption.

On this matter, the House prevailed and the exemption for the Hawaii law has been deleted. I expect, however, that this important provision will be considered in the context of another bill in the near future.

The conferees also had to resolve the differences between the House and the Senate provisions for modifying the requirement of current law that unemployment compensation be reduced by the amount of any pension or retirement benefits.

The Senate provision allowed the States to apply the reduction in unemployment benefits only when the pension is maintained, or contributed to, by a base period employer or an employer who is chargeable for the unemployment compensation benefits. The Senate provision also allowed the States to limit the reduction in unemployment benefits in accord with the employee's share of contributions to the pension fund, so that an individual's investment from his own fund in the pension would not be used against him when he qualifies from unemployment compensation benefits after retirement by reason of being involuntarily unemployed, available for work, and seeking work.

The House provision retained the essential elements of the Senate language and made three significant changes therein. First, the House language also allowed the States to totally disregard any amount of retirement income under the Social Security Act or the Railroad Retirement Act, Second, it allowed the States to disregard pension maintained or contributed to by a base period employer, if eligibility for or the amount of such pension were not affected by post-retirement earnings. Third, the House langage applied the pension offset only when the pension is paid by a base period, but not a chargeable employer.

The Senate provision essentially prevailed, and the conference agreement departs from the Senate provisions only in one respect. Except in the case of retirement benefits received under the Social Security Act or the Railroad Retirement Act, the pension offset would not apply when postretirement income did not effect either eligibility for or the amount of the pension maintained or contributed to by a base-period of chargeable employer.

In respect to this controversial issue, therefore, the Senate can be satisfied that its position has been sustained, in virtually every respect, by the confrence agreement.

Mr. President, I am pleased that these remaining items of disagreement have been resolved, and urge support for this important measure to provide retirement security for 8 million Americans and their families.

Mr. **Bradley**. Mr. President, I am delighted that we are finally resolving a problem which created serious burdens, particularly for senior citizens, in my State and throughout the country.

Since April 1 of this year individuals who would otherwise qualify for full unemployment benefits are finding those benefits diminished—even wiped out totally—solely because they receive social security or other pension benefits. An effort which started long before I was a Member of this body to reform unemployment abuses has proven to be a major abuse itself.

Senator John Chafee and I sought to eliminate that injustice and offered a corrective amendment to the Multiemployer Pension Act amendment. I am pleased that the Senate-House conference committee has chosen to sustain that corrective effort.

Second. A worker at company A retires at age 65 after 35 years of service there and begins collecting a pension of $600 per month. He then unsuccessfully seeks new employment and files an unemployment insurance claim. The State computes this individual's unemployment benefit rate at $130 per week, or $520 per month, because of the past earnings reported to the State. This individual would not be eligible for unemployment insurance payments because the amount of the pension received from the base period employer exceeded the unemployment insurance payments that were to be paid.

Third. The individual described in examples 1 and 2 finds work with ABC Construction and works a sufficient number of weeks to establish eligibility for unemployment insurance payments under State law. This individual would be eligible for unemployment insurance payments not subject to the offset provision. This is because an individual whose unemployment insurance payments were reduced or taken away entirely because of the base period employer proviso could restore his eligibility for unemployment insurance payments not subject to the offset provision by gaining employment with an employer separate and apart from the past employer who is paying worker's pension.

Fourth. Now, let us go back to example No. 2. Take the same individual who has worked for the same company, but with a different retirement plan. In this case, the individual contributed one-third of the value of the $600 pension payment received. So the portion of the pension subject to the offset would be $400. This person would be eligible for unemployment insurance payment of $30 per week because the total amount of the unemployment insurance payment this individual was otherwise eligible to receive would be reduced by the $400 pension received from the base period employer.

These examples show that older Americans who, under the law in operation since April 1, have been denied unemployment compensation, will now be eligible to receive it. Hardworking Americans and New Jerseyans have a right to unemployment benefits. Our amendment recognizes and assures that right.

Mr. **Stevens**. Mr. President, is the matter before the Senate H.R. 3904?

The **Presiding Officer**. The conference report thereon; the Senator is correct.

Mr. **Williams**. Mr. President, I think we are ready to act on the conference report.

The **Presiding Officer**. The question is on agreeing to the conference report.

The conference report was agreed to.

DISTRICT VIII—INTERNATIONAL ASSOCIATION OF
PERSONNEL IN EMPLOYMENT SECURITY,
October 28, 1981.

Re: Unemployment Compensation Issues Merit Personnel Standards

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

Dear Sir: I wish to go on record in behalf of the some 2000 members of District VIII, International Association of Personnel in Employment Security as opposing any Legislation which would deny benefits to servicemen who do not re-enlist. We wish to solicit your support in returning those benefits to our young people who have willingly given years of their lives to defend and protect those values which we as Americans cherish.

We feel in these trying times to deny Unemployment Benefits to these individuals who are in a period of adjustment from their Service life into a productive labor force and contributing member of society would greatly reduce our goals in Employment Security. We have for many years supported all Veterans' Benefits and worked to place these Veterans into the labor force with great success. To deny these benefits, we feel, may even reduce our contact with these individuals thereby increasing Unemployment nationwide.

We, again, request your assistance in this matter.

Yours sincerely,

BILL PATTON,
District VIII Representative, I.A.P.E.S.

INTERNATIONAL ASSOCIATION OF
PERSONNEL IN EMPLOYMENT SECURITY,
October 30, 1981.

Hon. HAROLD E. FORD,
Chairman, Subcommittee on Public Assistance and Unemployment Compensation, Committee on Ways and Means, Washington, D.C.

Dear Representative Ford: The International Association of Personnel in Employment Security wishes to thank the Subcommittee on Public Assistance and Unemployment Compensation for the opportunity to file a written statement regarding the hearings on unemployment issues that began October 28, 1981. The association, representing 27,000 United States members in the only professional association of employees in nonprofit manpower programs, specifically wishes to comment on item (3): Denial of unemployment compensation benefits for exservicemen who had the opportunity to re-enlist (Section 2405 of the Omnibus Reconciliation Act of 1981, P.L. 97-35

The association feels it unjust to deny unemployment compensation benefits to exservicemen who had the opportunity to re-enlist. This disqualification denies benefits to ex-servicemen who accepted private employment in good faith instead of re-enlisting, and subsequently suffered an unexpected layoff within the year. The severity of this law is in the total cancellation of wage credits. This disqualification denies unemployment to those who have served the country through military service. It is amazing that those completing a term of service under honorable conditions are totally disqualified, when those under questionable discharge are eligible for benefits. The association supports H.R. 4433.

Thank you for your consideration of this matter. Good luck in your deliberations.

Sincerely,

MICHAEL R. STONE, *Executive Director.*

MICHIGAN CHAPTER, INTERNATIONAL ASSOCIATION OF
PERSONNEL IN EMPLOYMENT SECURITY,
Jackson, Mich., November 3, 1981.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. SALMON: The Michigan Chapter of the International Association of Personnel in Employment Security (I.A.P.E.S.) strongly urges that unemployment benefits should not be denied to ex-servicemen/women who complete their tour of duty, and choose not to re-enlist.

The "voluntary" military service is being criticized, in many quarters, as being sub-standard already, being unable to attract quality persons. The forfeiture of unemployment benefits to those who are discharged after honorably serving their country, would be a "broken promise" to those already in the military service, and hardly an inducement to attract quality men and women to enlist in the future.

A better national economic policy which would provide meaningful jobs for those being discharged might be a more positive approach, rather than another "negative" budget-cutting device, which disregards the welfare of this country.

Sincerely,

FANNIE REYNOLDS, *President.*

MICHIGAN CHAPTER, INTERNATIONAL ASSOCIATION OF
PERSONNEL IN EMPLOYMENT SECURITY,
Detroit, Mich., November 5, 1981.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. SALMON: The Detroit Sub-Chapter of the Michigan Chapter of the International Association of Personnel in Employment Security (IAPES) is deeply concerned about the cuts, and exclusion of Unemployment Compensation to certain specified groups as outlined in the Reed Act.

It is urgent that there be no reduction in unemployment compensation to any of the specified groups nor should the legislation operate to exclude the same.

You are urged to take the proper steps to ensure that the specified groups be protected against loss and exclusion. They are already suffering from high cost of living and low wages.

Thank you for your cooperation.

Sincerely,

ELIZABETH PARKER, *Chapter President.*

NEW JERSEY CHAPTER, INTERNATIONAL ASSOCIATION OF
PERSONNEL IN EMPLOYMENT SECURITY,
Newark, N.J., November 4, 1981.

JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. SALMON: I am writing on behalf of my professional association to express the opinion of the membership regarding unemployment compensation issues.

It is with great interest that we learned of your hearing of 10/28/81 and we therefore wish to submit the following statement.

We, as professionals in the field of income and employment security, are concerned that unemployment compensation be administered in a fair and equitable manner in the spirit of the Wagner-Peyser Act.

It is for this reason that we are concerned about the exclusion of alien farm workers, certain classifications of fishermen, servicemen, who have served their term of enlistment but choose not to reenlist from unemployment. We feel that such exclusions render unemployment compensation laws irrequitable. We sincerely hope that the above group will be protected by unemployment coverage in order that all workers share equally in the fruits of their labor.

We also feel that it is advisable that the federal government not mandate the deduction of private pensions and social security from unemployment compensation. We strongly feel that should be a matter of states rights. Lastly, we are strongly in favor of the Reed Act extension. We feel that the extension of the Reed Act would be beneficial to the administration of unemployment compensation in this state.

Thank you for your attention to this matter.

Sincerely,

MARGARET CARRIGG,
State Chapter President.

NEW YORK STATE CHAPTER, INTERNATIONAL ASSOCIATION OF
PERSONNEL IN EMPLOYMENT SECURITY,
Rochester, N.Y., October 30, 1981.

MR. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. SALMON: I am writing on behalf of the members of the New York State Chapter of the International Association of Personnel in Employment Security. I.A.P.E.S. is comprised mainly of employees of the states' Unemployment Insurance and Employment Service agencies. As such, we take a strong interest in an issue currently under consideration in the House subcommittee on Public Assistance and Unemployment Compensation. That issue is the proposed denial of unemployment insurance benefits to servicemen and women who choose not to re-enlist.

While we support the policy of denying benefits to a person who quits his/her job without just cause, an exception to this policy is warranted when the unique nature of a job in the military is considered. A person who accepts a position in the military does not merely accept employment in the traditional sense. Rather, he/she must also accept a different lifestyle; one which requires the person to dress and behave in a specified way and to accept reassignment to almost any place in the world. The person in the military who finds these conditions intolerable cannot quit his/her position without suffering considerable legal and social consequences. Therefore, the person who joins the military must give up certain fundamental personal and legal freedoms.

When a person chooses not to accept re-enlistment, he/she should not be regarded as voluntarily leaving a job Rather, he/she should be looked upon as taking advantage of the infrequent opportunity to regain those fundamental personal and legal freedoms. For this reason, that person should not be denied unemployment insurance benefits.

We respectfully request that the above view be included in the printed record of the hearing held on this issue on October 28, 1981 by the House subcommittee on Public Assistance and Unemployment Compensation.

Sincerely,

THOMAS J. GANGLOFF,
Cochairman, Legislative Committee, New York State Chapter.

STATEMENT OF MAX J. BEILKE, LEGISLATIVE COUNSEL, THE NATIONAL ASSOCIATION FOR UNIFORMED SERVICES

Mr. Chairman, and members of the subcommittee, I welcome the opportunity to present the views of the National Association for Uniformed Services to this distinguished panel.

The National Association for Uniformed Services (NAUS) is unique in that our membership represents all ranks of career and non-career service personnel and their wives and widows. Our membership includes active, retired, and reserve personnel of all seven uniformed services; Army, Navy, Air Force, Marines, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration. With such a membership, we are able to draw information from a broad base for our legislative activities.

On November 1, 1979 NAUS testified before this panel in support of H.R. 5533, to deny unemployment compensation benefits to certain servicemen who were released from duty for the good of the service. At that time, NAUS also supported increasing the 90 day military service eligibility requirement for unemployment compensation. On September 26, 1980, Public Law 96-364 did replace the 90 day with a 365 day requirement. NAUS appreciates the efforts of this subcommittee in making that change.

More recently on March 11, 1981 NAUS appeared before this subcommittee in opposition to a proposal to eliminate unemployment compensation for those individuals who do not reenlist.

This review is only to remind this distinguished panel that NAUS has long been interested in unemployment compensation as it pertains to our military forces.

Today, NAUS wishes to express its opposition to Section 2405, of the Omnibus Reconciliation Act of 1981, Public Law 97-35 which denies unemployment compensation benefits for ex-servicemen who had the opportunity to reenlist. NAUS interprets this denial as an economic penalty for not reenlisting.

Enlistment contracts are for a specified number of years. Renewal of these contracts is at the option of the government and the individual concerned. There should be no penalty assessed either party if renewal is not consumated. The problem of retention in our military forces will not be resolved by attempting to hold our enlisted people hostage by denial of unemployment compensation.

Not everyone is suited for a military career. The military establishment does not expect nor desire it. If everyone who enlisted remained for 20 years or more there would be serious in-service promotion and assignment problems. Additionally, retired pay costs would skyrocket. If only those set on a minimum of 20 years service actually enlisted, our force structure would consist of a lot of supervisors and few workers. How many people take their first job with the idea of staying with their original employer for 20 years? For a majority of enlistees, the service is their first real work commitment.

The armed services need a large number of young men and women to enter the service, spend three or four years and then return to civilian life. We should thank those who give these years in service to their country, not punish them. Upon release from active duty, few remain in the proximity of their last duty station. Most return to their place of first enlistment, which is generally where they were born and raised. Because these individuals do not remain near their last duty station it is often impossible for them to seek employment prior to discharge. It is extremely difficult to job hunt in Madison, Wisconsin while stationed at Fort Hood Texas. The Hawaiian or Alaskan resident has an even greater problem if their last duty station is within these contiguous United States. Many young servicemen and women spend their last service days overseas, and are returned to this country only for outprocessing and discharge. Should these individuals be penalized when they were never afforded the opportunity to seek new employment?

Private sector employees generally have the opportunity to seek a new employer before voluntarily leaving their current employer. Few employees leave an employer without having already secured other employment. Even fewer who do leave a job voluntarily, leave the immediate locale where last employed. This is certainly not true of our service personnel.

Spouses of military personnel are denied unemployment compensation when they leave their job voluntarily to follow their military spouse because of transfer orders or upon discharge from the service. In these cases, both members of the family are denied an interm source of income pending acceptance of new employment. Denial of benefits to the servicemember in this instance creates a double hardship.

Today's All-Volunteer force has more single parent families than ever before. The Army has more than 20,000 single soldiers with children. Leaving the services without some form of unemployment compensation while they seek new employment will be economic disaster for some.

NAUS is fully cognizant that there are those who favor the denial of unemployment compensation to ex-service personnel. They base their argument on the premise that since states either disqualify or reduce the amount of the benefit to private employees who leave their job voluntarily, the service person refusing reenlistment offers are thereby quitting the service voluntarily and should therefore be denied like benefits. If this premise is allowed to stand, then it's fair to carry it one step further. It is true, all service personnel qualified for enlistment are offered the opportunity to reenlist. By the same token, the military service also offers to all qualified citizens the opportunity to enlist. For qualified individuals the opportunity to enlist or reenlist is offered to qualified personnel indiscriminately. Therefore why not deny unemployment compensation to qualified personnel who do not enlist?

Public Law 94-566 decreed that individuals receiving a government or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on previous work shall have their unemployment compensation reduced on a dollar for dollar basis by the amount of such pension, retirement, or retired pay, annuity or other similar payment.

Public Law 96-364 changed that decree in that it specified that such pensions or retirement benefits were under a plan maintained or contributed to by a base period employer or chargeable employer. Public Law 96-364 further amended the effective date of this provision to apply to certifications of states for 1981 and subsequent years.

Information available to NAUS indicates there are 14 states which offset unemployment compensation by the amount of military retired pay even though the military was not the individual's base employer. This in essence reduces unemployment compensation for a retiree even though the retiree may have worked for an employer who was required to pay the full unemployment compensation tax. This is unfair for two basic reasons. The military retiree suffers a reduction or total loss in unemployment compensation benefits regardless of the number of years worked for an employer after leaving the military. Second, the employer is required to pay the unemployment compensation tax even though the military retiree will never be able to receive unemployment compensation or will receive only a small portion of it.

NAUS supports the elimination of denying or reducing unemployment compensation due to receipt of military retired pay when the military is not the base employer.

I would also like to bring to your attention that some states treat military disability retired pay and Veterans Administration's disability compensation differently in that they reduce unemployment compensation for receipt of one but not the other. When an individual becomes disabled while on active duty and with less than 20 years service, that individual has the option of selecting disability retired pay or VA compensation. They cannot receive both.

Recently a case in California was brought to my attention where a WW II disabled veteran was denied unemployment compensation because he was in receipt of disability retired pay. This individual was drafted in March 1943 and injured in October 1944 while on a flying mission in New Guinea. From October 1944 until July 1947, when eventually discharged, this individual was hospitalized. Now in 1980 he was denied unemployment compensation because he is in receipt of military disability retired pay. Had he been in receipt of VA compensation, receipt of unemployment benefits would have been assured. Remember, the nature of the injury is not the determining factor between disability retired pay and veteran's disability compensation. This means two individuals with identical injuries, but receiving compensation from different sources would be treated differently when applying for unemployment compensation.

The National Commission on Unemployment Compensation recommended in 1980 that the Federal Unemployment Tax Act requiring states to reduce benefits by amount of any pension payment be repealed. NAUS concurs in that recommendation. NAUS also urges the repeal of that portion of Public Law 97-35, the Omnibus Reconciliation Budget Act of 1981 that prohibits unemployment compensation for those enlisted members of the military, who though fully qualified for reenlistment, do not reenlist.

At this time I am prepared to respond to any questions you may have.

Statement of Betty Duskin, Director of Research, National Council of Senior Citizens

Mr. Chairman, Members of the Committee, I am Betty Duskin, Director of Research of the National Council of Senior Citizens. The National Council of Senior Citizens is a nonprofit organization of 4,000 clubs across the entire nation, representing approximately four million older Americans.

I thank you for this opportunity to comment on the as yet unresolved problem of the offset between retirement income and unemployment compensation. We testified before this Committee in 1979 when repeal was under consideration; only a modest compromise was effected. We testified earlier before the National Commission on Unemployment Compensation; this body recommended repeal. We would have testified in 1976 when the original Unemployment Compensation offset provision was enacted into law as part of the Unemployment Compensation Amendments of 1976, but no public hearings preceded the appearance of the amendment to the Senate version. Thus, important and complex legislation was enacted into law without, in our view, adequate discussion and understanding. This Committee is to be commended for its attention to the issue.

I will present only a few brief points in support of repeal of the retirement income offset provision:

1. Technically, it is a major error to lump all forms of retirement income together as if they were comparable. They are not.

2. Treating "retirement" as a "voluntary quit" defies the facts:

Fifty-seven percent of those who "retire" do so for reasons of health. In many cases it may require total withdrawal from the labor force; in some cases it may mean partial withdrawal with less than full-time-year-round participation, and in other cases it may mean total withdrawal from usual and customary work and, involvement only in less demanding work that accommodates the health problems.

Approximately 26 percent of those who retire do so because they are discouraged from remaining in their current jobs and discouraged by labor market conditions from finding a new job.

The remainder, roughly 17 percent, are alleged to have retired "voluntarily." But this is not the group that is likely to run into problems with an offset provision in unemployment compensation. They don't want to work (that's what "voluntary quit" means!) and it is assumed that they can afford not to work.

3. Unemployment Compensation is an "entitlement" program on an insurance basis. This means that one should collect benefits if the contingency insured against occurs. In this case, the contingency is involuntary unemployment. Other things shouldn't matter, and for the most part they don't. Nobody is asked whether or not they're married or if they have a bank account, or what kind of car they drive! Some people take offense that questions of this sort aren't asked. These are the people who don't really understand the purpose of the program: they think the program is intended just to do a favor for someone who is unemployed. Providing an income floor for someone who has temporarily lose their earnings is important, but if that were all that was involved we probably would ask a lot of nosey questions. But it isn't all. When someone is unemployed, we all lose the value of the goods and services that would otherwise have been produced. Similarly, when someone has a job that doesn't fully utilize all their skills, we all lost the value of what they might have contributed if they had a more suitable job. Unemployment Compensation helps to avoid these losses. It buys people the time to look for the best job they can find. It buys the economy greater productivity—which benefits *all* of us. That's why we need rules that will allow the program to work quickly (benefits paid without long delays) and easily (no rules that will make the program complicated to administer or that will discourage job search).

4. Demographic changes will result in a larger proportion of older people in the population in the years to come. Coupled with a low birth rate, experts conclude that a labor shortage will be with us shortly after the turn of the century. Therefore, the national interest is served if we encourage people to stay in the labor force rather than retire. The availability of unemployment benefits is certainly a help.

Moreover, because working is an important part of life in our society, we have many laws which we passed to make it easier for older people who are willing and able to work to do so!

We have legislated against age discrimination in employment;

We have eliminated mandatory retirement in the federal employment sector;

We have raised the threshold of age-based retirement in the private sector from 65 to 70;

We have continually liberalized the exempt amount of earnings for the retirement test in Old Age and Survivors Insurance;

In 1977, we increased the "bonus" for delayed retirement in Social Security;

And the list goes on.

But we tell these same people that if they take advantage of employment opportunities after they have earned an entitlement to retirement income and have begun to receive it, that they will be singled out for adverse treatment in regard to unemployment compensation. Is there any reason for this inconsistency, this irrationality? Yes. It's called experience rating.

The only group likely to favor the towards classifying people as "retired," instead of unemployed, is the covered business community. Under experience rating, there tax rate may go down under the offset provision, since some individuals are likely to lose eligibility altogether. The business community will have an incentive to "retire" older employees in the event of a layoff, without regard to their function or their level of competence or experience. For this reason, even limiting reductions in U.C. to base period employer retirement income is wrong. A discriminatory bias of this nature should not be condoned by the U.C. system.

In our view, the real flaw in the U.C. system is experience rating, not that distinctions between being retired and being unemployed are difficult to make. In the real world, they are not mutually exclusive categories.

In addition, I find it difficult to believe that Congress intended to include Social Security benefits as offsetting retirement income. If we must again compromise, we would urge that Social Security benefits be excluded.

It is a shame that Congress chose to act on this in 1976. More than half the states already included some kind of offset in the operation of their U.C. programs. Federal intervention in this case, made things worse, not better.

We ask that no further damage be done and that the provision be repealed.

STATEMENT OF DEBRA MILLER, ON BEHALF OF THE NATIONAL EMPLOYMENT LAW PROJECT

The National Employment Law Project, Inc., ("Project") is the Legal Services Corporation support center that specializes in the employment and unemployment problems of poor and low-income people. Unemployment Insurance is one of the Project's principal areas of concentration. The Project, on behalf of its clients, would like to briefly comment on two unemployment insurance issues that are being considered by this Subcommittee.

UNEMPLOYMENT INSURANCE PENSION OFFSET

Section 414 of the Multi-Employer Pension Plan Amendments Act of 1980 (Public Law 96-364) amended Section 3304(a)(15) of the Internal Revenue Code to modify the mandatory requirement that Unemployment Insurance (UI) benefits be reduced or "offset" by the amount of any private or governmental pension received by a claimant. The 1980 law currently provides that UI benefits are only to be offset by pensions that were maintained or contributed to by a "base period employer."

The effect of this modification was to eliminate reduction of UI benefits for a retired worker who returns to the workforce to work for a new employer—as long as the new employer (base period employer) does not contribute to the worker's previously-established pension plan. For retired workers receiving private or federal pensions, who return to work and are subsequently laid-off, the 1980 law usually means full UI benefits—complete relief from the pension offset requirements. This is because chances are good that the private or federal pensioner's new employer, or base period employer, will not be contributing to the same private or federal pension as the old employer.

A glaring inequity arises, however, with the 1980 law's treatment of Social Security pensioners. Because most employers make Social Security contributions, almost any new, or base period, employer will be considered a contributing employer within the meaning of the existing pension offset law, thus subjecting millions of low-income, Social Security retirees to federal mandatory pension offset requirements.

The Project opposes the present offset requirement both in principle and in its application. The concept of reducing a claimant's unemployment insurance benefits simply because the claimant has pension income contravenes the insurance principles of the unemployment insurance system by conditioning the amount of UI benefits on the availability of other income. Both the legislative history and judicial interpretations of the original unemployment insurance legislation support the conclusion that the right to receive UI benefits is an earned contractual right established without regard to other income for workers who meet certain statutory qualifying requirements. Provisions, such as the pension offset requirement, that impose restrictions onto the receipt of these earned "insurance" benefits based upon the existence of other income sources, undermine the essential concept of the UI program to inure workers against the prospect of involuntary unemployment. Older workers who following retirement, re-attach themselves to the workforce and qualify for UI benefits, should have no less right to those UI benefits when they are involuntarily laid-off than younger workers, despite their additional pensioner status.

The Project views the attempts by the 96th Congress to restore pensioners' rights to earned unemployment benefits as a positive step towards the restoration of the original concept of the unemployment insurance system. The modification to the pension offset law enacted by the 96th Congress, as applied, however, restored UI benefits to private and federal pensioners at the expense of those who most need relief from the UI pension offset provision-Social Security recipients. This sort of blatant discrimination against older workers who receive the most inadequate pension income and who most need to supplement this income through post-retirement employment, violates not only the purpose of the UI system, but also generally accepted principles within our society of equity and fairness.

For the above reasons, the Project supports repeal of the pension offset requirement, and urges the subcommittee to remove the inequity embodied in present law by approving Representative Downey's bill, H.R. 1902.

UNEMPLOYMENT INSURANCE FOR EX-SERVICE MEMBERS

Prior to the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), only servicemembers who were discharged under dishonorable or bad conduct conditions were automatically denied unemployment insurance benefits. The determination on whether a failure to re-enlist would be considered a "voluntary quit" was left to state law; failure to re-enlist generally was not considered by the states to be a "voluntary quit." Under the new reconciliation statute, Section 8521(a)(1)(B) of Title 5 of the United States Code has been amended to automatically deny unemployment insurance benefits to servicemembers if the individual: (1) did not receive an honorable discharge; (2) voluntarily left the service (i.e., failed to re-enlist after a term of enlistment); or (3) was discharged for cause as determined by the Department of Defense. As explained below, this new statute not only pre-empts state determinations of UI eligibility and fails to treat servicemembers in a fashion similar to civilian workers, it creates a virtually insurmountable barrier that prevents almost any ex-servicemember from receiving UI benefits.

To qualify for UI benefits under the new statute, an ex-servicemember must essentially pass a three-prong test. First, the Employment Service office must determine that the servicemember has received a discharge under honorable conditions (i.e., honorable or general discharge). This first prong changes old law by adding one more category of discharge ("other than honorable") to the two previous discharge categories ("dishonorable" and "bad conduct") for purposes of UI disqualification. Under military regulations, it is possible for a servicemember to receive an "other than honorable" discharge for such reasons as failure to pay debts or support his/her family, and thereby be denied UI benefits. This new federal requirement clearly imposes harsher eligibility criteria than would most state laws, and subjects military personnel to more stringent standards than civilian workers.

Even if a servicemember has received an "honorable conditions" discharge, the second prong of the new statute will in most cases cause UI disqualification. This prong disqualifies persons who resigned or voluntarily left the service. Recent directives from the U.S. Department of Labor have interpreted this provision to mean that a claimant voluntarily left if: he/she: (1) was eligible to re-enlist, but didn't, or (2) left on his/her own request because of hardship or retirement.

Designed to produce parity in UI requirements between private and military labor sectors, this voluntary-quite provision, in actuality, produces disparity by subjecting military members to harsher standards then civilians. Unlike their civilian counterparts, military claimants are now penalized for failing to renew a contract of service, as well as for hardships beyond their control (i.e. severe family or financial problems). Information available to the Project indicates that the navy, for example, considers a person to have left the service voluntarily if he/she left for any of the following reasons: hardship, parenthood or custody of minor children, pregnancy, erroneous enlistment, or failure to meet physical standards. According to the Navy, the only involuntary reason for leaving the service is physical disability. Clearly, it is unwise policy as well as ineffective from a military/civilian parity standpoint to reward veterans who have honorably served in our military forces with a denial of UI benefits under these circumstances.

Finally, if a servicemember is not disqualified by one of the first two prongs of the new statute, he/she stands little chance of qualifying for UI benefits under the third prong. This third provision allows the Employment Security office to accept as "final and conclusive" any determination made by the military that a servicemember was discharged "for cause". Such a standard has allowed subjective and varying interpretations of "cause" even within the Department of Defense. The Project's information indicates that the navy considers obesity, inability to adapt to the service, and personal behavior to be "cause", while the Army defines "cause" to include pregnancy, alcohol abuse, and unsuitability. This sort of arbitrary and nebulous provision so disparate from civilian UI criteria, especially when applied without an extra-military appeal process, has no place in the nation's unemployment insurance system.

Finally, it is important to note that the three provisions discussed above do more than simply disqualify ex-servicemembers from immediate UI coverage. In addition, if disqualified under the new statute, the servicemember's military service is likely not to be considered as wages or employment within the base period for purposes of UI eligibility following lay-off from a post-service civilian job. Under an analogous civilian scenario, a civilian who voluntarily quite a job, went on to another job, and was subsequently laid off, would be able to count the first job as wages for purposes of UI benefits.

For the reasons stated above, the Project believes that the recent reconciliation provision should be repealed, and the prior language restored to Section 8521(a)(1)(B) of Title 5 of the U.S. Code. Accordingly, the Project urges the subcommittee to act favorably on Representative Donald Mitchell's bill, H.R. 4433.

Rhode Island Legal Services, Inc.,
Providence, R.I., November 18, 1981.

Re: H.R. 4433, H.R. 4573, and H.R. 4686.

John Salmon,
Chief Counsel, House Committee on Ways and Means, 1102 Longworth HOB, Washington, D.C.

Dear Mr. Salmon: We have been advised that your Committee is currently considering the above-mentioned bills amending Section 2405 of the Omnibus Budget Reconciliation Act (P.L. 97-35, Aug. 13, 1981). As attorneys who represent a number of veterans applying for governmental benefits, we feel compelled to submit our opinion regarding these bills to the Committee. We request that our comments be included in the official record on this matter.

It is our understanding that the underlying premise for the denial of unemployment compensation to ex-servicemembers is ostensibly to provide equal treatment for both ex-service-members and non-servicemembers. Thus, it is argued that an individual who refuses to remain in the service although he or she is advised of the option of immediate reenlistment, should be denied compensation just as a civilian worker who voluntarily leaves his employment. By the same token, it is argued that a discharge of a servicemember for "cause" prior to conclusion of that individual's enlistment should be treated as a civilian's termination for misconduct and thus disqualify the veteran for unemployment compensation. As currently enacted, this "misconduct disqualification applies to individuals who are discharged "under honorable conditions" and are otherwise qualified for veterans benefits.

For the following reasons we believe that the system of entitlement established by the Act is unjust and should be dramatically modified.

I. DENIAL OF UNEMPLOYMENT COMPENSATION DUE TO THE VETERAN'S FAILURE TO REENLIST

A. The veteran's decision not to reenlist

The most salient error in the approach taken by proponents of the Omnibus Act is their failure to consider the fundamental difference between the decision not to reenlist and the decision to leave civilian employment. An individual enlists in the military with a definite expectation of serving for a pre-determined period of time. Once in the service, an enlistee is exposed to a life-style which is completely different from that offered in civilian employment. Even though an individual is given the title of truck mechanic or computer programmer, in the final analysis he or she is a soldier. Thus, stringent limitations are imposed on the individual to ensure discipline and readiness for combat. This type of life-style may or may not appeal to the servicemember. The armed forces enlistment contract explicitly recognizes this fact by providing the servicemember with the option to renew following completion of the contract's term.

B. Technical training offered by the service

Proponents of the "equal treatment" for veterans which is purportedly created by the Omnibus Act, contend that the technical training and experience which are often provided in the service make the veteran so valuable to civilian employers that he/she can virtually secure employment immediately upon discharge in any job market. The flaws in this line of reasoning are evident upon the most cursory examination.

The most glaring discrepancy in this proposition is the fact that very few veterans are able to settle in the vicinity of their last duty assignment. Thus, these veterans have no opportunity prior to discharge to secure housing and apply for jobs in the area where they will eventually reside. [It should be noted that prospective employers in an overwhelming majority of cases will not discuss employment with a servicemember until after discharge and presentation of separation papers.]

This obligation to relocate upon release from the armed forces is not limited to individuals who are assigned overseas and typically separated from the service in a processing center within days or even hours of returning to this country. The same requirement is faced by veterans who are assigned to desolate areas of the country or areas where there is no market for their technical skills. For example, a computer operator stationed at Loring Air Force Base in a remote part of northern Maine would find little demand for his/her skills in that region.

The Act's supporters also overlook the fact that its scope applies to all veterans. Thus, it serves to deny compensation to veterans whose technical skills may be in a field which is not readily transferrable to the civilian sector. Additionally, there are a vast number of service-members who receive no technical training. Indeed, the lower educational levels and mental abilities one would find in this group would indicate that they would be most in need of unemployment compensation to ease their transition from military to civilian employment.

II. DENIAL OF UNEMPLOYMENT COMPENSATION DUE TO THE VETERAN'S DISCHARGE FOR CAUSE

While the Act's supporters claim to be seeking "equal treatment" for veterans and non-veterans who are terminated for "cause", they are in fact enshrining inequality. This inequality is created because the Act restricts veteran eligibility for unemployment compensation by altering the applicant's insured status thereby preventing consideration of the applicant's individual circumstances. To appreciate the severe limitations imposed by the Act, it might be helpful to briefly discuss the eligibility determination process.

The initial determination of eligibility is a two step process. First, the applicant must demonstrate to the state employment agency that he/she enjoys insured status by having received the requisite amount of earnings and having worked for the required period of time for an employer who contributes to the unemployment compensation fund. If the applicant meets this requirement, he/she is considered to have "insured status" and the circumstances under his/her employment was terminated are then considered. At this second stage, if the termination is found to be "non-disqualifying", i.e., voluntary with good cause or involuntary for a reason other than employee misconduct, the applicant is deemed to be eligible for compensation.

Under the Omnibus Act, veterans who are discharged for "cause" prior to the expiration of their service obligation are denied unemployment compensation. However, this denial is not based upon a finding that the termination was under disqualifying circumstances, i.e., due to veteran's misconduct. Rather, the denial is due to the determination that the veteran lacks "insured status". While a non-service-member is permitted to contest before the state agency the employer's allegations that the applicant's actions warrant his/her termination for misconduct, a determination of the absence of insured status forecloses the state agency's authority to independently review the applicant's performance.

Although at first blush it may appear that such authority in the state agency would be unnecessary, it must be kept in mind that the individuals being considered are all recipients of discharges "under honorable conditions", not individuals who are discharged administratively as "undesirable" or through court-martial with bad conduct or dishonorable discharges. Following the implementation of procedures whereby veterans can have their discharges reviewed by military authorities, over 60 percent of those who applied were awarded "upgraded" discharges. This fact, coupled with the ambiguous nature of the phrase "discharge for cause" leads one to the inescapable conclusion that independent review would not be an exercise in futility.

III. PROPOSALS TO REDUCE THE MAXIMUM BENEFIT PERIOD FOR VETERANS

In addition to consideration of a return to the unemployment compensation scheme in effect prior to the Omnibus Act, the Committee also has before it bills which would reinstitute the pre-Act eligibility standards but limit the benefit period available to eligible veterans. While these proposals on the surface would appear to represent an adequate compromise, such a conclusion is fallacious and such bills would be an insult to our veterans.

These bills would label the veteran a second class citizen who is undeserving of the same benefits offered his/her civilian counterparts. The veteran is forced to this conclusion by consideration of the fact that all recipients of unemployment compensation are required to demonstrate continued eligibility by actively seeking employment and not refusing suitable employment. Therefore, these bills serve to deny compensation to individuals who are actively attempting to return to the labor force but are unable to find employment. The sole reason for the discontinuance of compensation would be because they are veterans.

The mechanism to weed out the malingerers from the ranks of those who receive unemployment compensation is already in place. That mechanism and not the wholesale reduction of the protection afforded veterans must be utilized.

CONCLUSION

On the basis of the foregoing, the Committee should act to expeditiously remove the bar to unemployment compensation to veterans established by the Omnibus Act. To fail to do so, would constitute yet another message to today's veterans and servicemembers that they are not on equal footing with civilians or the veterans of past decades.

Respectfully submitted,

GARY POWERS, Esquire.

TEXAS EMPLOYMENT COMMISSION,
Austin, Tex., November 5, 1981.

Hon. **HAROLD E. FORD**,
Chairman, Subcommittee on Public Assistance and Unemployment Compensation, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR SIR: As Administrator of the Texas Employment Commission, this position paper is submitted to be made a part of this subcommittee's public hearings on certain unemployment issues.

These issues and comments are as follows:

(1) Extension of the Reed Act, expired July 1, 1981 (Section 903(c)(2) of the Social Security Act);

The Texas Agency favors an extension of the Reed Act for 10 years. We would request the Congress to give consideration to permanent authorization.

(2) Extension of exclusion of certain alien farm workers from the Federal Unemployment Tax Act (FUTA), expires January 1, 1982 (Section 3306(c)(1)(B) of the Internal Revenue Code);

Currently this category of alien farm workers is covered under the Texas Unemployment Compensation Act. We feel that a continuation of this exclusion gives employers no incentive to use American labor and voids the payment of taxes into FUTA and into State trust funds. This exclusion should be allowed to expire.

(3) Denial of unemployment compensation benefits for ex-servicemen who had the opportunity to reenlist (Section 2405 of the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35);

The Texas Agency feels that this law should be repealed. Though this is a federal program, the 67th Legislature of Texas recently passed legislation which stated that veterans who leave the military at the end of an enlistment period would not be disqualified for benefits if they were eligible to reenlist. Furthermore, the reasons for separation from employment in Texas, is not cause for elimination of wage credits.

(4) Exclusion of student interns over age 21 from FUTA (Section 3306(c)(10)(c) of the Internal Revenue Code);

No comments.

(5) Reduction of unemployment compensation by the amount of pension or retirement pay received from a "base period" employer (Section 3304(a)(15) of the Internal Revenue Code as amended by Section 414 of P.L. 96-364);

The receipt of a work-related retirement or pension is not related to the principle of insurance against a period of unemployment. This law is an administration headache for the states resulting in numerous overpayments. This Agency advocates an elimination of all pension deductions, including Old Age Benefits. This would insure equity of treatment of all pensioners.

(6) Exclusion of certain fishermen from FUTA (Section 822 of the Economic Recovery Tax Act of 1981, P.L. 97-34).

This law should be allowed to expire on December 31, 1981. The Texas Agency feels that coverage of this category of fishermen affords the employers the availability of experienced workers when needed. Without such coverage, these employees could be lost permanently to other types of industry during off season.

I thank you for the opportunity given to present the views of the Texas Agency.

Sincerely,

ERNIE W. TULLIS, *Administrator.*

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